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LETTER
TO THE
SECRETARY OF WAR,
OR,
REVIEW
OF THE
CONTROVERSY ON A QUESTION OF RANK
BETWEEN
GENERALS SCOTT AND GAINES.

[Scott (Winfield)]

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TO THE
HONOURABLE SECRETARY OF WAR.

New-York, February 18, 1827.

SIR :

In a letter of the 10th ultimo, I brought under your notice a pamphlet against me, manifestly the production of General Gaines ; and it being evident from the character of the outrage that no act of the government, whatever might be its wish, could afford me indemnification, I asked to be remitted to my natural right of self-vindication before the tribunal to which I had been appealed.

In support of that demand, I stated some of the peculiarities of the case. General Gaines, as was pointed out, had not only printed an official letter, in abuse of me, (originally addressed to the General-in-Chief) but had suppressed my reply similarly directed ; and to crown the stratagem, added his rejoinder (in a remote part of the pamphlet) to the reply so suppressed ! If the character of my suppressed letter be considered with the one to which it was a reply, I apprehend it will be distinctly perceived that a baser suppression has rarely been exposed.

In your answer (of the 1st instant) to my request, you interpose, as it were, a shield, to protect General Gaines from exposure, that precise regulation of your Department of which his publication is, itself, a flagrant violation.

The words of the regulation (No. 1497) are—"Publications relative to transactions between officers, of a private or personal nature are prohibited," &c. "It is made the duty of all officers having the power, to arrest and prefer evidence for charge on such publication," &c. "when the proper authority will bring the officer to trial before a General Court Martial."

You intimate that General Gaines will be held responsible, if sufficient evidence be adduced, for his breach of that regulation. *That*, Sir, was not the design of the letter which I had the honour to address to you.

In the same communication, I asked for a certified copy of his reply (Jan. 11, 1826) to my suppressed letter, alluded to above. My declared objects were, to ascertain if it contained the same distinct *falsehood* (in respect to a challenge) asserted in the printed letter, and, if so, to prefer an immediate demand that he should be brought to trial on that charge (of falsehood.) It is obvious, that if I had proceeded upon the *printed* copy, and had failed to fix upon him the publication by technical evidence;—or, if a variation had been discovered at the trial, between the printed copy and the original, in either case the prosecution would have failed. I knew the party to whom I was opposed. *His* tracks point not to the den in which he is concealed.

That General Gaines had before him a copy of my letter which he so shamelessly contradicts and suppresses, will not, I suppose, be denied. The fact is self-evident from his reply. I also stated (on information not official) that he had been furnished with copies of all my communications to the authorities at Washington on the question of rank between us; and, I added, that a copy of but one of his on the same subject, (that bearing date Jan. [30] 1825) had been sent to me.

My application under this head, was wholly unnoticed by you in your answer above recited. The same request was repeated on the 1st instant; but it seems, on this point, I am not to be honoured even with a reply. [A reply, with the paper, received Feb. 24th instant, is acknowledged in a subsequent part of this letter.]

Does not the Department perceive, that by its decisions on the foregoing requests, General Gaines and his published slanders, are, *in effect*, taken under its special protection? That I am denied the right to consign him to the public indignation which he merits? That the legal means of his judicial condemnation are withheld? And, has not the Department

reason to know, that my enemy is not amenable to *another* tribunal to which wounded honour, from the impotency of public justice, is sometimes forced to appeal?

Such is my singular position in relation to an unparalleled outrage. The strong arm of the government has forced me into my utmost limit, and I must bear, or redress my injuries as I may.

Hence my present purpose of laying before you a refutation of every charge and point made against me in the pamphlet. The review will be necessarily tedious. It is important to me, however, that it be placed on the files of the Department, and I hope I may trust to the justice of my official superiors to give to it an attentive perusal. What further measures I may deem it my duty to take with General Gaines will remain for future consideration.

I have assumed him to be the author and publisher of the pamphlet. Internal evidence alone is sufficient to establish these conclusions. Besides, it is known that the pamphlet comes from the West—in all probability from Cincinnati, his head quarters.

It is here worthy of remark, that this self-complacent individual, who, with mawkish precepts on his lips, which he is ever the first to violate; thus expresses himself in a letter to the Secretary of War, dated January 31, 1825. He is condemning appeals to the public:—"Besides; controversies among the chiefs of an army, founded on such productions, [a printed opinion of General Jesup on brevet rank] would be more likely to lead it into labyrinths of inextricable confusion and consequent disgrace, than to promote the cause of truth, obedience to the laws, and the enhancement of the moral power resulting therefrom." *See the letter in his Cincinnati pamphlet, p. 18.*

Yet in the next three months (*See 13th and 14th lines, p. 22, same pamphlet*) this same General Gaines sanctioned and circulated against me a pamphlet, (said to have been written by his aide-de-camp) before I had published a line, and now repeats the offence without shame or remorse!

I shall show that the circulation of General Gaines' *recent* pamphlet has been sly and restricted. It is, as will be observed, without title, signature, printer's name, or place of publication. One copy was enclosed by a friend of mine, in Congress, to another friend in Richmond. This is the one transmitted by me to the Department, the 10th ultimo. A second copy was sent to me, direct, by another friend in Congress. Each of these members became possessed of the pamphlet *by accident, or at second hand*. Long since I received the first copy, at Richmond, my friends in distant parts of the union had not heard of the pamphlet, or had only heard of the two copies I have mentioned. My direct intelligence is from Washington, Richmond, Norfolk, Fortress Monroe, Baltimore, Philadelphia, Pittsburgh, New-York, West-Point, &c. &c.; and, on the 11th instant, I transmitted to the Department of War, a letter dated the 17th ultimo, from an officer at the Infantry School of Practice, near St. Louis. The writer states, that a copy of a letter from General Gaines to the Department, dated October 25, 1826, *in which liberties were taken with my name*, had then just been shown to him by some partisan of my defamer. [I again request to be furnished with a copy of this letter. It is not given in the pamphlet.] From the subject matter of my correspondent's communication, his fair and honourable character, it is perfectly obvious if he had seen or heard of the pamphlet, *that also*, would have been mentioned. It is probable, however, that but few copies have been entrusted to army-officers. Their better knowledge of the matters, names, &c. given in the pamphlet, would have enabled them, at once, to detect and expose the falsehoods published against me.

Will it be believed, that the two copies which have fallen into my hands were alone put into circulation? The strong probability is, as I have argued, that copies have been sent only to the friends and partisans of the author, through whom it was hoped a silent prejudice might gradually be propagated against me, particularly in Congress, without exposing the hand of the assassin, or the instrument that inflicted the

blow. All, however, who were invited to join the conspiracy, have not thought proper to obey the call.

The following is the outline of General Gaines' pamphlet. The *numbers* are prefixed by me for the convenience of reference.

1. A letter from General Scott to the Adjutant-General, dated, January 1, 1825, in support of his right to rank and precedence over General Gaines. A dry technical argument, of about seven pages—not a word of contumely or disrespect towards General G, or any one else.

Note. A copy was sent by the General-in-chief, to General Gaines for his remarks and observations thereupon.

2. The reply of General Gaines, Jan. 30, 1825, addressed to the General-in-chief—nine pages ; a stream of indecent invective against General Scott, interrupted by the self-praises of the writer, his homage to men in power, and compliments to all future readers ; but few attempts at argument.

Note. A copy was sent by the General-in-chief to General Scott for his *rejoinder*. That rejoinder (also addressed to General Brown) of Feb. 5, 1825, ought to have been the No. 3. of the pamphlet. It exposes the character of No. 2 with severity. Hence it is suppressed. Those *three papers* were laid before the Board of Officers which sat about that time, on the question argued in No. 1, and ought, therefore, to have been printed together.

3. (Of the pamphlet.) A letter from General Gaines (apparently) to the Secretary of War, dated Jan. 31, 1825. In the main, a notice of a printed opinion of General Jesup on the nature of brevet-rank ; but not without the writer's usual attacks on General Scott.

4. Proceedings (Extract) of the Board of Officers before-mentioned.

5. Laws and regulations (Extracts) relative to brevet-rank.

6. A puff, and reprint of a pamphlet *sanctioned* by General Gaines, and published at New-York in the spring of 1825, in favour of his pretensions to rank General Scott. The

pamphlet is entitled, a "*Brief Examination, &c.*" said to be from the pen of General Gaines' Aide-de-Camp.

7 and last. Letter from General Gaines (apparently to the Secretary of War) dated, Jan. 11, 1826, in part containing miscellaneous abuse of General Scott, but mainly a reply to his suppressed letter.

Note. This letter would, doubtless, have been printed before the No. 3. above, but that its juxtaposition with No. 2. would have betrayed to the most careless reader, the fraud in respect to the suppression. Hence an interval of seven pages of miscellaneous matters between the No. 2. and No. 7. of the pamphlet.

Such is the general character of the publication which I am about to subject to a severer analysis. It forms twenty-five closely printed octavo pages.

I shall, under the first general head, notice what may be called, General Gaines' *personalities*, or *imputations*; under the second, whatever may have a direct bearing on the question between us of *rank and command in the army*. The two heads will, in some instances, unavoidably run into each other; but I shall endeavour to observe the analysis as strictly as practicable.

I. Personalities : Imputations.

I will here repeat the remark that these commenced with General Gaines. My letter of Jan. 1, 1825, is absolutely free from this vice. If his reply, addressed to high authority, had been sent back with orders to expunge every thing which did not belong to the logic of the question, his forty-five manuscript pages would have been curtailed to a mere note; our military archives would have been preserved from pollution, and the public, for whom his letter was manifestly designed, spared the scandalous spectacle now presented by that letter and other parts of his pamphlet. Some of these ideas were strongly presented in my suppressed letter, or rejoinder, and all of them plainly intimated. I was, however, without influence;—made to the General-in-chief my apology in advance,

and then retorted and recriminated—not at random, but on specification and proof. I beg leave to renew my most unfeigned regrets for what must here follow of the same character.

1. I am charged with having, as compiler of the Army Regulations, edition of 1821, contrived Article 3, (on the rank of officers, including brevet-rank) so as to operate in my favour against General Gaines. See his letter, January [30] 1825, *passim*.

This is his principal and perennial source of invective against me. If that be stopped, a portion of his rancour, at least, ought to seek a different channel.

Now, it ought to be sufficient for me in my defence, to point to the very elaborate argument (my letter Jan. 1, 1825.) on the question of rank between us, which stands at the head of his pamphlet, and in which there is not the slightest reference to the *third*, or any other article of the regulations. But as it is in his reply to that very argument that the charge abounds, I will mount, in point of time, a step higher.

Soon after I had first heard of this *specific* charge, I addressed a letter of complaint (July 25, 1824,) to General Gaines, not doubting that he would, as a gentleman, retract it. His offensive reply led to the challenge which will be noticed in the sequel. The following is an extract of my letter.

“In all my discussions of the question of rank between us, with the War Department, I have never, to the best of my recollection, appealed to the said [Army] Regulations, as authority in my favour. On the contrary, I have distinctly relied on *facts, principles, and usages*, which had their existence prior to the publication of that book. I have gone farther, and now repeat, that whilst I am willing the book shall be quoted against my claim to the precedence in question, I shall ever scorn to support that claim by any authority which I may have assisted to establish.”

It is here pertinent to remark, that General Gaines has, as his pamphlet will show, frequently quoted the Regulations

against me, and once on the Board of 1821, as will be explained in the sequel, obtained, under the very article in question, a momentary advantage over me, and which he could not otherwise have obtained. All these points were fully stated in my letter, February 5, 1825. Hence, in part, its suppression in the pamphlet. Here I might rest my defence against the charge cited ; but, if possible, stronger evidence yet remains.

In my letter to the Secretary, in which I proposed to compile a system of General Regulations for the Army, I suggested, if my propositions were adopted, that the *projet*, when prepared, might be read to him, in the presence of such experienced officers as he might name, with a view to his sanction ; and I added, if I did not at the reading, answer every objection made by the officers selected for that purpose, I would alter, add, or expunge, till the Secretary should be entirely satisfied. My propositions were accepted. When the *projet* was prepared, I again wrote to the Secretary to say, I would be at Washington at a time appointed ; and reminded him of the former suggestion relative to the presence of officers. (I quote from memory. My first letter was afterwards printed, and the second is, I presume, in the War Office.) I kept my appointment. On inquiring of the Secretary if he had invited a certain number of officers to assist at the reading, I think he replied in the negative ; but added, "General Gaines is here." I made some complimentary remarks on General Gaines ; an hour was appointed, and I attended. General Gaines was already with the Secretary. The *projet* was carefully and deliberately read—General Gaines being politely invited, by me, to object with freedom, and assured of my docility. Every suggestion made by him, and, after conversation or discussion, insisted on, was cheerfully adopted. The objections were not numerous, and led to some four or five slight alterations at most. These alterations are unimportant, *except as to the history of the third article.*

On reference to the edition of 1821, of the Regulations, it will be seen, that that Article (relative to rank, including

brevet-rank) consists of three paragraphs, numbered 1, 2, 3, respectively. Nos. 2 and 3, have only, I think, been objected to by General Gaines at any time."

When, at the reading, we had reached the third Article, I again turned to General Gaines and said, I would first read it through without particular pause, and then a second time, for remarks. I did so. The following note from the then Secretary of War, was asked for on the first suspicion that my *fairness*, in respect to this matter, was likely to be impeached by General Gaines.

"War Department, May 1st, 1822.

"SIR:

"IN answer to your note of this morning, I have to state that I have a perfect recollection of *the discussion which took place between General Gaines and yourself* in my presence, on Art. 3. par. 3. in June 1820, or some time in that summer. The discussion, I think, took place on a suggestion from me while the manuscript was under consideration, that I had experienced some difficulty in the Department, in applying the terms "separate command," and that I thought that the paragraph, as it then stood, was not sufficiently explicit. The result of the discussion was, that *some additions or alterations were made* which, as far as my memory serves me, *modified the paragraph as it now stands.*

"With great respect, &c.

(Signed)

"J. C. CALHOUN."

"To Major General Scott."

This letter is adduced to show that at the reading of the Regulations, *in the presence of the Secretary and General Gains, the third Article was discussed and amended, and that General Gaines aided in fixing its provisions.*

I beg that these facts be now contrasted with an assertion of General Gaines, in his letter, Jan. [30,] 1825, (*pamphlet*, p. 12.) Speaking of the third Article of the Regulations, he dares to say—"such was the uniform construction of the

law in question, up to the year 1821, when a *printed* copy of the Regulations *for the first time exhibited to my view the ambiguous paragraphs*, [Nos. 2. and 3.] embracing the before-mentioned effort of General Scott to contravene the law, and thereby place himself above me." And this is the individual who, in utter contempt of the facts certified by the late Secretary of War, and after seeing my letters above-noticed, (July 25, 1824, and Jan. 1, 1825,) scandalously charges me, before the public, with offences which he alone of the army, is base enough to commit, or to imagine !

I shall add the following note, addressed to the Secretary of War, (a copy is before me, under the seal of the Department) which was filed, Jan. 12, 1825, whilst I was engaged in preparing the second edition of the Army Regulations, published in that year. It will show the fate of the two disputed paragraphs. My recommendation was adopted.

"I respectfully recommend that the two last paragraphs in the old article 3, crossed in red-ink, be omitted ; 1st, Because they have been absurdly supposed to *enlarge* the rights of brevet-officers to commands, when, in fact, those paragraphs, particularly the first [2d; the *first* mentioned of the *two*] place *restrictions* on those rights greater than were intended by me, or by any statute : 2d—Because, with equal absurdity, those paragraphs have been considered to favour the claims of brevet-officers to pay and emoluments." (Signed)
 "W. SCOTT."

2. "The revised book [General Regulations, edition of 1825,] contains in lieu of what was stricken out of the first, several paragraphs of less ambiguous import truly ; but tending more fully to disclose the fixed purpose of the compiler to disregard the clearest principles of law respecting brevet rank." [General Scott has been permitted] "to decide an important question, to which he was a *party*, and to decide that question contrary to an express statute of the United States."—*General Gaines to the Secretary of War*, Jan. 11, 1826, pamphlet, p. 24.

To bespeak the patience of my official superiors—I ask nothing more, I beg it will be remembered that, to the uningenuous, it is as easy to scatter assertions, as it is to breathe. Disproof, on the contrary, lags heavily through the field of evidence, and few are willing to follow the laborious trace, though it lead to truth and justice. I might, it is true, with a safe conscience, oppose a simple denial to all the charges of my defamer, and throw the burden of proof *on him*. But that would avail me but little. He would instantly be at his work again. I, therefore, mean, before I shall have done with him, distinctly to prove, that in *judgment*, as in *veracity*, he is *not* to be trusted.

In lieu of the two paragraphs before mentioned, and with the proper approval, after full consideration, I inserted, in the new Regulations, No. 16—"For restrictions *on the rank and command* of regimental officers, by virtue of brevet commissions, see 61st article of War; and for restrictions on the *pay and emoluments* of brevet-rank, see act of Congress, 16th April, 1818, and the exposition of that act, No. [1124] in article 71 [Pay Department] of these Regulations."

It will be perceived that there is nothing here *substantively new*. To avoid all cavil, it was thought best to throw back the whole subject of *rank*, by brevet, on positive legislation. Hence the simple reference to the 61st article of War, and hence a like *reference* to the act, April 16, 1818, which, as expounded in No. 1124, now, alone, regulates the claims of brevet officers to pay and allowances. (*Note.* I am not the author of No. 1124, which is nearly contemporaneous with the act it expounds. On the contrary, aided by the Paymaster-general, I made great, but ineffectual efforts, in 1825, to get it altered—more particularly for the benefit of brevet majors—to whom, in my humble opinion, it does great injustice.)

I beg to fix upon the mind, once for all, the distinction between *rank*, on the one hand, and *pay and emoluments*, on the other. In our service they do not uniformly or necessarily go together. A brevet-major, for example, may (it is of daily

occurrence) take his seat on a court-martial, as major, and yet be paid only as captain. He may have the command of even *four* companies of *different* regiments, and over *senior* captains, by virtue of his brevet, and the 61st article of War (similar cases are not infrequent) and yet be *paid*, under the act of 1818, and No. 1124, only as a captain. Take the case of my own brevet. It gives me, at all times, the *rank* of major-general; yet if off duty, or without a command *equal* to a division, I should be *paid* only as a brigadier. In the revolutionary army, also, the *pay* was not always according to *brevet-rank*. See *Journals*, Sept. 10, 1783.

But to recur to the distinct question of *rank and command*. I aver, that with the exception of the 61st article of the rules and articles of War, there is not a line or word of positive legislation, now in force, regulating the rights of brevet-officers under *this* head. And here I am happy to find, that General Gaines has, at least for once, ventured on a *specification*, in support of an opposite averment. He says (letter Jan. 11, 1826) that—"It was, and is, by this section of law [the 4th, act, July 6, 1812,] that all the brevets of every grade of officers (*generals and all*) were placed upon the same footing, in respect to *rank and command*, as the 61st article of War placed the brevets of *regimental officers*."

Here is a distinct admission that the article of War does not restrict the brevets of "general officers and all"; but only the brevets of *regimental* officers. I had fully established this point elsewhere, and am glad to find that my demonstration has not been lost upon him. Driven, however, from that ground, he now seeks to find a restriction on the rights of general officers' brevets (in respect to rank and command) in the act of 1812.—It is important to trace the inception of this new position. I shall show that it had not occurred to him at the date of his letter, Jan. [30], 1825—from which I quote the following paragraphs, without even *under-scoring* a word not printed by himself in *italics*. He is speaking of the 61st article of War, act, April 10, 1806.

"This article comprehends the first and only law of Con-

gress upon the subject of 'brevet-rank' from the time the constitution of the United States was adopted, up to the 6th July, 1812,—when a law passed, authorising the President of the United States to confer brevet-rank, and providing for the pay of brevet officers, under circumstances therein specified." *Pamphlet, p. 10.*

This exposition of the act, 1812, is perfectly fair. The section authorises the President "to confer" the rank, and it provides for the "pay of brevet officers."—Take the next paragraph of the pamphlet.

"The act of 1806, has remained in force ever since its passage. It is the only act of Congress, and consequently the only law known to the army of the United States, embracing the principles upon which brevet-rank and brevet-command [added to that of July, 1812] depend."

This too is perfectly fair and just, *if* we omit the brackets and the words "[added to that of July, 1812]" precisely thus given in the pamphlet. But let it be remarked, that the *words and the brackets* are not in the original, or rather, not in the office-copy sent to me soon after its date. They were inserted in the *printed* copy, to prevent the letter, Jan. [30] 1825, from contradicting the letter, Jan. 11, 1826! The trick, like Spartan honesty, would have been clever enough—*if it had not been detected!* But I scorn to profit either by the folly, or the knavery of my adversary. Let him amend his argument. It shall avail him nothing.—I now proceed to show, that section 4, act, July 6, 1812, imposes restrictions on the brevet-rank, or the brevet-command, of neither *general officers*, nor *regimental officers*. Here is the section which he has *appended* to the 61st article of War.

"That the President is hereby authorised to confer brevet rank on such officers of the Army as shall distinguish themselves by gallant actions, or meritorious conduct, or who shall have served ten years in any one grade: *Provided* that, nothing herein contained shall be so construed as to entitle officers so brevetted to any additional pay or emoluments, except when commanding separate posts, districts or detach-

ments, when they shall be entitled to, and receive the same pay and emoluments to which officers of the same grades are now, or hereafter may be allowed by law."

The *body* of the section authorises the rank ; enumerates the cases in which it may be conferred, and names the appointing power. Further, the rank thus provided for, was to be over and above the ordinary rank, regimental or otherwise, previously held ; for it was to be conferred only on "*officers of the Army.*" So far, no restriction whatever was imposed, either on the *rights of command* conferred by the rank, or the *rights to the pay and emoluments of such rank.* There is not even a *reference* to the restrictions on the rights of command, *within regiments*, imposed in the pre-existing 61st Article of War. Of course, no *greater* restrictions could have been intended, than had been provided by that Article. What was the object of the *proviso* ? Manifestly to guard the Treasury. The "additional pay and emoluments" are only to be received in the cases expressly enumerated. Not a word is said about the *rights of command*—not even a *reference* to the 61st Article. Now, as under the rule, "*expressio unius est exclusio alterius,*" officers could not receive pay and emoluments in any case not expressed ; so, *pay and emoluments* being mentioned and restricted, and the *rights of command* not even alluded to, the section could not, by any possibility, be made to embrace the latter. But it is absolutely idle to dwell on this subject. The first part of the section is modified, and the *proviso* superseded by, the act entitled, an act, "*regulating the pay and emoluments of brevet officers,*" April 16, 1816.—The *modification* consists, simply, in requiring the advice and consent of the Senate, in the case of brevets, as in respect to all other military commissions.

I have then *demonstrated*, that a reference to this section, I may say, in any part of the Regulations, would have been *false* ! The only part of it now in force relates solely to the *inducements* and *contingencies* on which the rank may be *conferred* ; and these matters did not fall within the *plan* of the compilation. How criminal then, General Gaines' charges against

me (letter, Jan. 11, 1826.) of “manifest omissions ;” of “entire omission of much that should have been expressed ;” of having, in a case to which I “was a party,” decided, “contrary to an *express* statute of the United States.”

Let it be now remembered, that these accusations, on a purely technical subject, have been published—with a breadth of assertion only equalled by their falsity, to, I know not to whom;—that I have been denied the privilege of a public reply, and that the charges have been made in the teeth of my *recorded declaration* that—“whilst I am willing the book should be quoted against my claim to the precedence in question, I shall ever scorn to support that claim by any authority which I may have assisted to establish.” (*See suppressed letter, February 5, 1825, enclosure [A.]*)

I think there is another insertion in the same third article, second edition of the Army Regulations, “in lieu of what was stricken out of the first,” which has brought down upon me the weighty censures of General Gaines. The following paragraph is, I am pretty sure, in *flagrante bello* with some dozen of his straggling assertions.

Paragraph 18. “The terms *regiment* and *corps*, as used in the 61st Article of War, will be considered as synonymous. (Decision of the President of the United States, announced in Orders, July 1, 1816.)”

The question is here, not what are the several significations of the word “Corps ;” for it has as many as either the noun “body,” or “state ;” but what is its *meaning*, as used in the 61st Article of War ; or, what is the same thing, what is a *corps* in relation to *brevet-rank*.

It has just been shown, that the 61st article is the only positive legislation of the country affecting the rights of brevet officers, in respect to commands ; and that General Gaines *now* admits (letter, Jan. 11, 1826,) what had elsewhere been demonstrated by me, that, that article does not embrace “general officers and all,” but only *regimental officers*. Nevertheless, it will be seen in the pamphlet, that in discussing his claims to precedence in rank over me, he has slyly borrowed,

and used the word "Corps," as applicable to *brigades, divisions, &c.* Hence he objects, I suppose, to the paragraph quoted.

Now it might, against any other opponent, be sufficient for me to point to my recorded declaration not to avail myself of any thing in the book, (unless the *principle* had pre-existed;) and that, independent of President Monroe's *sanction*, in 1825, President Madison had *sanctioned* the same principle, in 1816. I shall, however, show it to be of much older date.

It has often been stated, that our article of War, on brevet-rank, is substantially, and almost literally, the same as the British article on the same subject. We, in short, borrowed ours from the parent country, Sep. 20, 1776. The following is the official exposition of the British article.

"When *Corps* join either in camp, garrison, or quarters, the eldest officer, whether by brevet or otherwise, is to command the whole." *British Regulations and orders for the Army—editions, 1811, and 1813, p. 4.*

Here "corps" is the only word used to embrace *regiment* (the general term) and *corps*—as "Cape Corps," "African Corps," &c. &c. So in the British *annual Army list*; under those precise heads, *Cape Corps, African Corps*, there are two columns for the rank of the officers—one for "rank in the regiment," (not *corps-rank*) and the other column for brevet-rank, or, "rank in the army." In the British army then, *regiment* and *corps*, in respect to brevet-rank, are synonymous terms.

And so again, in our revolutionary war, General Washington, in a letter on a case of *brevet-rank*, says: "Detachments, which are again to return to their corps, can be deemed nothing else but temporary commands, whether they are out for a week, for a month, or for a campaign, they are still temporary. The permanent commands, are of *regiments*, and other *established corps*." See *Rogers' American Biography, p. 323.* It may be asked, what "established corps;" that is, *permanently organized corps*, have we in our service, *other than*

regiments? I answer, that, we have *had* many, and *now* have the *corps* of *Engineers*, and the *Marine Corps*;—whereas, we have not, at present, *organized*, a temporary brigade or division, except, perhaps, a brigade at the Infantry School of Practice. What then becomes of General Gaines's attempt to show, that brigades, divisions, (and even the entire army) are *corps* in the sense of the 61st article of War, which, alone, affects the question of brevet-rank? He quotes, from the Regulations, the word "*corps*" applied to brigades, divisions, &c. making part of an *army in the field*, and which, even in that case, in the language of General Washington, though "*out for a campaign*," are still temporary *corps*—not *regiments*, or "*other established corps*."

3. If the whole army be *one corps*, according to General Gaines, and in the sense of the 61st article, the exercise of brevet-rank would be at an end—the acts of Congress to the contrary notwithstanding.

I had said (letter, Jan. 1, 1825,) that, "the 61st article of War, only operates a restriction on the brevets of *regimental* officers. As major-general, or brigadier-general, I belong to no particular regiment, or corps."—On these two sentences General Gaines has fastened with an ignorant joy;—quotes a passage of the Regulations upon me, and distinctly gives me the *lie*! (*Pamphlet*, p. 11.) I shall content myself with showing, that his knowledge of grammatical construction is on a level with his manners.—This is his quotation from our Regulations.

"*Base of discipline, or subordination.* It is the intention of the government, that there be established in every regiment, or corps, and throughout the army, as one corps, a gradual and universal subordination, or authority—which, without loss of force, shall be even, mild, and paternal; and which, founded in justice and firmness, shall maintain all subordinates in the strictest observance of duty."

The point is in the three or four first lines, and turns on the words "*as one corps*." And let it be borne in mind, that

"discipline" is defined in another part (*Paragraph, No. 295*) of the same book, to mean, technically, "correction; the enforcement of subordination," &c. The plain import then of the paragraph in discussion, is, that subordination shall not only prevail in a single regiment, or the corps of engineers, from its colonel, through the field officers downwards;—but throughout all parts of the army, *as one corps* (by *assimilation*) under the President, through the generals and general staff, downwards.

Johnson's quarto Dictionary gives thirty definitions, or shades of meaning, under the conjunction, *as*. "1. In the same manner with something else." "6. Like; of the same kind with." "8. As if; according to the manner that would be, if." "10. As it were; in some sort." "30. As though; as if."—Horne Tooke used pleasantly to say, that his *life* had been put in jeopardy by Lord Mansfield's ignorance of the etymology of the conjunction *and*. My *honour* and *veracity* have been seriously assailed by General Gaines's gross ignorance of the meaning of the conjunction *as*!

4. In my letter, Jan. 1, 1825, published and replied to by General Gaines, I had said that, he (in September, 1814,) after I had received the rank of major-general, by brevet, admitted me to be his senior, or superior officer, in the presence of Major Worth. I had not then a line from Major Worth of any sort, on the subject; but immediately wrote to him for his recollections. His note, or certificate, to the point, was made part of my suppressed letter, February 5, 1825, and is now with it in the Department. About the end of the last month I wrote to a friend in Washington, to procure and transmit to me a copy of that document; and, also, copies of other papers wanted for this review of the controversy between General Gaines and myself. Only a few of the papers thus unofficially asked for, have been received. My request has been repeated through the same channel; but Major Worth's certificate is not yet come to hand. I have by me, however, his miscellaneous letter which enclosed the cer-

tificate, and which recites its substance. I shall, presently, have occasion to quote from the letter ; but beg that the certificate itself may be specially referred to.

As General Gaines has had the hardihood to deny ever having admitted me to be his senior ; or, what is the same thing in military language—his superior officer ; and has shamelessly published his contradiction, I solemnly reassert my first declaration ; and will add, on the faith of that single testimony, that he made again the same admission to me as late as the year 1816, or, if by letter, perhaps in 1820. Private letters I do not generally file, and if one of his be preserved, containing such admission, it is now with my papers, of that period, in Richmond. But this I most distinctly remember and aver, that *since* 1815, General Gaines expressed himself orally, or, in writing to me, to this effect :—whilst he would ever protest (on some special ground stated) to the rank of a third person, whom he named, and who had also been placed over him, by brevet ; *he would cheerfully yield to my seniority*. My assertions, however, I know he will again contradict, and I give him the benefit of *such* contradiction.—I come now to the letter of Major Worth, before me, and which relates to the period of 1814, only.

(Extract.)

“ West-Point, Jan. 9, 1825.

“ I received your letter yesterday, but by the winter’s arrangement of the mails, my reply cannot be despatched till to-morrow. In endeavouring to be concise, as you suggest, I have not gone much into detail, yet have stated clearly the fact of his [General Gaines] having yielded the point of precedence on several, and particularly on one occasion, at Albany ; and, also, his *remark of your having got the rank of him*. I distinctly recollect the remark, but whether it was at Albany, Utica, or on the journey, I am not precise.”—This is the whole of his letter relating to the points in controversy, or to General Gaines.—The following note or certificate, is from Major Belton—the *original* is in the War office.

“ Baltimore, 18th March, 1825.

“ Sometime in September 1814, while Major-Generals Scott and Gaines were in the city of Albany; having then, in consequence of wounds, retired from the army of the Niagara—on the occasion of a public dinner, given by the citizens to those gentlemen, and soon after the receipt of their brevet commissions, *precedence was given by General Gaines to General Scott*. I was the A. D. Camp to General Gaines, and recollect discussing the subject of the relative rank of the parties, with Major Worth, the A. D. Camp to Major General Scott.”—The *copy* before me is in the hand-writing of my late aide-de-camp, now Captain H. Smith.

I will add one more support to my declarations above. It is a letter from Major Crane. He, in the first part of the letter, convinces me that it was with my aide, Mr. Galt, and not myself, that he had conversed some years before, on the subject in question.

“ Fortress Monroe, Dec. 17, 1826.

“ Dear Sir :

“ I have received your favour of the 13th instant; in which, you say, I stated to you, some years since, that General Gaines had made a declaration in my hearing, that you had become his superior officer. I do not recollect ever having any conversation with you on the subject; but there was a communication between Lieut. Galt and myself, relative to it.—From the great lapse of time since this occurrence, I am unable to recollect, distinctly, *all* that passed; but a short time after the battle of Chippewa, a report reached Sackett’s Harbour, that you was brevetted for that action, and to the best of my recollection, I was at head-quarters when it was first mentioned. General Gaines was present, and observed, when this report was communicated, that he was *glad of it*; that you *deserved it*, and, that *he would serve under you with pleasure*, or something to that effect. I considered these remarks as elicited by the most friendly feelings towards you, and his satisfaction at your being rewarded for your distinguished services, on that occasion. My impressions are, that several

other officers were present ; but at this distant period, I cannot be positive as to the fact.

“ I am, &c. &c.

(Signed)

“ I. B. CRANE.

“ To Major-General W. Scott, Richmond, Va.”

I transmitted Major Crane's original letter to the War Department. The copy before me is certified by Col. Jones, adjutant-general.

Can the weight of testimony, here adduced, independent of my own declarations, be resisted ?—I shall have occasion to show, under the second general head of this review, that by every act of the government, and the common understanding of the country, as well as by the admissions of General Gaines himself, above, I was, contemporaneously, and universally, regarded as his superior officer.

General G. in his reply to my letter, Jan. 1, 1825,—speaking of Major Worth, asks :—“ Did the Major make a memorandum of the conversation referred to, at the time it occurred ? ***** Can it be possible that he [General S.] should have been so provident, as to prepare, in 1814, what he seems to conceive a remedy for an evil in 1825, by imposing on his aide-de-camp the invidious task of noting down my unguarded remarks, and placing on them a construction that they could not reasonably bear ?” (*Pamphlet p. 16.*) General G. well knew the injustice of these sarcasms. He well knew the noble and chivalrous character of Major Worth—to whom, no man dare make a request which honour might not sanction. General G., also, knows that, unlike himself, I never desired, or permitted my aides-de-camp to write polemical pamphlets and replies, in my favour—to go forth with extravagant praises of my own. That *he* has permitted and done these acts, *see his pamphlet* under consideration, *pages 18 and 20.*—To ask for certificates from honourable men, to facts known to be within their knowledge (to repel wanton outrage) is not only fair, but an obligation of duty. Even this I have been slow to do, as this review demonstrates.

5. An associated accusation against me in the pamphlet, is, *that I am a stickler for high places at the festive board*, and General G. feebly admits having yielded precedence to me on an occasion of that sort. It is remembered, however, by more than himself, that at the public dinner in question, with which he and I were honoured by the patriotic citizens of Albany, there was at least *ceremony* at the introduction ; and that, the point of precedence was stated and yielded by himself, *on the express ground of rank*. What my manners are, in private, or public parties, shall be left to others to determine ; but he has heard me express a contempt for extra ceremony, on ordinary occasions, in a dialect which he knows not even how to repeat.—This imputation was, also, repelled in my suppressed letter.

6. In 1821, a Board of General Officers was called to Washington, General Brown, president, to aid in the reduction of the army.—Speaking of that Board, and addressing himself to General Brown, (letter, Jan. [30], 1825) General Gaines intimates, that *he thus threatened and silenced me* :—General Scott's " suggestion of an opinion that I had taken the position to which he was entitled, was promptly met by a decided remark on my part, that I perfectly understood, and should at all times occupy, the position to which my military rank entitled me. Here the conversation ended, and I continued, without interruption, to occupy my proper station on your [General Brown's] right." *Pamphlet, p. 12.*

That General Gaines ever presumed, in my presence, to utter the foregoing threat, or to speak to me in a tone not at once subdued and respectful, is absolutely untrue. I appeal to all who have ever seen us together for the truth of my assertion. He adds to his report of that threat—" Here the conversation ended" !

Now, at the moment we were about to take our seats at the Board, " the suggestion of an opinion" made by me, was substantially, and fully, to this effect :—" I am the second, in rank, in the whole army ; but, by the second paragraph, third

article of the Regulations, recently adopted, I am barred, on this particular occasion, from taking my place according to that rank." I then quoted the paragraph, beginning, "brevet rank shall take command or effect, *only* in the following cases." This sentence is followed up by a precise enumeration of cases, and in which enumeration, *military Boards, or Boards of officers*, are not mentioned. Having pointed out this defect or omission in the paragraph, I continued—"the rule of construction is, *as exception strengthens cases not excepted, so does enumeration weaken cases not enumerated*. I am, therefore, as I now discover, debarred by a regulation, *of my own compiling*, from claiming, here, that precedence, which, on any other occasion, would be my right." General Gaines politely made some slight remark, which *neither positively affirmed or denied* either proposition which I had advanced. I rejoined, in the same tone, that—"if General Brown, at any time retired, I should consider the meeting as a *detachment*, and claim my rank accordingly." "*Here the conversation ended.*" General Brown did not retire from the Board during the session. And *this* is the case in which General Gaines once enjoyed a temporary and nominal precedence over me—and that, too, under one of those paragraphs, *of my compiling*, to which he has since so violently objected!—It has been seen, above, that, at my special instance, that paragraph, and the one which followed, were expunged from the present Regulations.

Again it should be remembered, that all these matters were stated and exposed in my suppressed letter—a letter too, which would not have added more than three pages to his pamphlet, and there are three blank pages in the centre of each copy that has fallen into my hands!*

* The foregoing was copied by me for General Scott from his MS. up to this point, when (Feb. 21.) he received the letter from Mr. Secretary Barbour of the 19th Feb. 1827, post-marked Washington-City, Feb. 21—enclosing copies of the letters from General Gaines of the 11th January, and 25th October, 1826, addressed to the Department, with a copy of

7. General Gaines, in the same tissue of abuse, letter, Jan. [30], 1825, tells the story of his Court in 1816, and more than insinuates that my being placed on it, as President, was the result of an intrigue between Mr. Secretary Crawford and myself. In reply, I solemnly aver, that to the best of my knowledge and belief, not a word ever passed between Mr. Crawford and myself in relation to that case. My person even, was probably unknown to Mr. C. at the time that the trial and my name as President of the Court, were determined upon. I had been absent from the United States, and on arriving at Washington, *via* Baltimore, had not heard of the charges against General Gaines. General Parker, the Adjutant and Inspector General, gave me the first intelligence of the charges, and, in part, of the composition of the court. I exclaimed that I was the friend of General Gaines—that I did not believe him capable of crime, with other similar declarations. An officer, present, modestly interrupted me, and said to my great surprise, that *he* was the prosecutor; that he wanted nothing but a fair investigation of the charges he had preferred, &c. &c. I rejoined, that I should feel bound to object to myself, and particularly after what I had incautiously said, and appealed to General Parker—intending he should represent my declarations to the Secretary. Colonel Trimble, the prosecutor, an honourable and gallant man, since dead of wounds received at the sortie from Fort Erie, expressed a hope that I might not be excused, and *there* the conversation, and my intercourse with Colonel T. for years, ended. With him, it is proper to add, that accident had never thrown me in the way of cultivating either friendship or intimacy: but, in common with the whole army, I knew his character and services, and held them in great esteem and

Major Worth's certificate of the 9th January, 1825, all of which papers are referred to above.

P. H. GALT.

These papers will be found noticed by me in the sequel. The letter, Jan. 11, 1826, is *not* certified.

W. SCOTT.

admiration. As to my individual opinion and votes on the trial, these (on account of the usual injunction of secrecy) are only known to my associates. Between the parties, however, I may say, that my duty was fairly and justly performed—for the sincerity of which declaration I confidently appeal not only to the members of the court, but to that POWER to which was given the sacred pledge of an oath. And here it is due to General Gaines to add, after this solemn allusion to his case, that he was fully and honourably acquitted by the court of every accusation on which he was tried. My regard for him remained after the event, as before, and so continued till the spring of 1822. Subsequently (in that year, or, in 1823) I ascertained that under the pretence of deciding a question of rank between Colonels Fenwick and Clinch, at Pensacola, he had made a most insidious attack on the third article of the Regulations, so often mentioned above: but I became not his *enemy* till 1824.

These details will, I fear, be found tedious to the Department. To one who has been his *friend*, they are something more.

“ Meantime I seek no sympathies, nor need ;

“ The thorns which I have reaped are of the tree

“ I planted—they have torn me—and I bleed :

“ I should have *known* what fruit would spring from such a seed.”

8. I had said, in my letter, Jan. 1, 1825, (*See pamphlet, p. 4,*) that, General G. on the occasion noticed, and whilst I was the commander of a department, as well as President of his court, had, on his arrival at New-York, reported to me, in person, as he would have reported to any other superior officer. I knew at the time of writing that letter, that it would be sent to him for his remarks, or reply ; but I had no conception even then, of his powers at hardy and shameless contradiction. I now acknowledge that I did wrong to state any thing whatever on the authority of my own simple declaration. The statement was, nevertheless, true to the letter. He has contradicted, but not disproved it. The point, how-

ever, is otherwise unimportant ; and I am willing the contradiction should rest on the comparative tenacity of our memories, or, if he prefer, on our respective characters for veracity.

9. I extend the same remarks to his denial of my having, to relieve him from the strict duress to which his arrest would have subjected him—"enlarged his limits [of course as his senior, and commanding officer,] either by an order, in the usual form, or by a letter addressed to him personally ;" and I will add, it is quite possible, if my office books of that period (now, as I suppose, in the Adjutant General's office, Washington,) be examined, such order, or letter, may be found therein recorded.

10. General G. in different parts of the same letter, speaks of my *position* on his court as "an assumed authority over" him; of his never, when not in arrest, suffering "mutiny to erect itself near" him;—calls me his "heartless junior puffed up with a little brief authority," and "exercising a vain glorious triumph over [my] swordless senior." (Pages 14, and 15.) I can only appeal to the surviving members of the court, and to the many hundred spectators, who were present at the different parts of the trial. By all these I have no doubt it will be remembered, that my conduct towards General G. was delicately courteous. *He* frequently lost his temper and presence of mind; but I was, nevertheless, patient towards him. My conduct would have been the same towards any other individual standing in his relation to that court. But I am not done with these his sarcasms. He was my "swordless senior," it seems, and, therefore, could not repress "mutiny in his heartless junior." I beg that this may be borne in mind a moment longer.

I had stated in the letter to which he replies, that within a few days after his release from arrest, the Governor of New-York, in the presence of an immense concourse of officers, principally of the militia, being about to present swords on

the part of the State, to General G. and myself, asked us, then standing side by side, which of the two was the senior? That being told that I was, General G. assented, and accordingly my sword was the first presented. (*See pamphlet, p. 1.*) This declaration General G. (*pamphlet, p. 16.*) recites, as if for the purpose of contradicting it; but immediately remembering who had witnessed the ceremony, his heart fails him, and he flies off into a patriotic homily (intended for the public) on the ceremonies of a dinner table! This is no exaggeration. Why did he not, on that proud occasion, repress "mutiny" in his "heartless junior?" He was no longer "swordless;" he had two mortal weapons. Why then did he not draw on his "heartless junior," and exclaim—"Let this my sword report what speech forbears?" But this did he not then, nor at any time; and I shall presently have occasion to show, in his *own words*, that with all his zeal for the suppression of "mutiny," he is, "for reasons recorded in all written law on the subject," "no disturber of the peace," but amiably confines himself to the circulation of vindictive pamphlets, and manuscript letters, of a "gladiatorial aspect," against the object of his resentment. But I will not anticipate my remarks on his letter, Jan. 11, 1826, (in respect to the challenge.) (*Note.* The foregoing accusations against me were noticed and repelled in my rejoinder, Feb. 5, 1825. Hence another reason why it is not found in the pamphlet.)

11. Of the imputations cast upon me by the letter, Jan, [30], 1825, there is one more that I shall notice at this time.

The writer (*pamphlet, p. 17*) is pleased to speak of my *productions* and *style* as *hackneyed, crooked, interminable, calumnious, ill-advised, and ill-designed*—all of which epithets he has crowded into one sentence of less than three lines; and, in one of his inedited letters to me, (July 26, 1824,) which, I have no doubt, he has already circulated, and will incontinently print—without the "rejoinder," he alludes to a "particular description of writing for which [I am] known to be so much distinguished." I shall take the liberty to reply,

that these misfortunes of style may result from the fact, that, what purports to be my writings are, in truth, my own ;—that in reporting a battle I never yet stole the pomp, the manner, the words of Ossian—although the great Napoleon was an admirer of that bard :—That I never yet stole an harangue, words and all, to publish to militia under my command, when there was not an enemy within the possible reach of them—and, that I never yet desired, or permitted, my aides to write pamphlets or replies for me against my opponents. These things General Gaines *knows* himself to have done.

12. I come at length to the subject of the challenge, and the last imputations contained in the pamphlet, which I shall directly notice. *See his letter, Jan, 11, 1826, p. 25.*

Perhaps I may be thought to owe an apology to the Department for presuming to allude to matters prohibited by the articles of war ; but, on reference to the 88th article it will be seen, that all prosecutions for offences against that code must be commenced within the two years next immediately after the alleged infractions. The two years, in my case, elapsed in July last. It is, however, not the fault of General Gaines that my arrest was not ordered in time. He tells the Department (and it seems in a duplicate, the original of which had gone sometime before through the General-in-Chief,) that “ great efforts have been made to give currency to an opinion that I am a disturber of the peace, [by whom ?] and at the same time to show that I have refused to accept a challenge.” “ But, to say nothing of a *certain article of war* upon the subject,” &c.—“ Upon the subject of the challenge I should not presume to address you, had not that officer [General S.] in his *official* communication to you of the 5th February last [General S.’s suppressed letter] referred to it.” “ But since this compiler of regulations has made his *avowed* challenge the subject of an *official* communication to you,” &c. Here then were two attempts to get me arrested and “ killed off by a court-martial”—one addressed to the General-in-Chief, and one to the Department of War.

Now it is here proper to bring into view, that I had but *obscurely* alluded to the challenge, and its non-acceptance, as a reason, why I was not to be expected to stoop to answer the abuse which General Gaines had lavished upon me. But General G. procures a copy of the letter—not for *publication*, as we have seen ;—but to *interpret* what might not otherwise have been understood ; whereas, if I had been, (without the aid of his interpretation) put on my trial for that particular sort of offence, I should not have confessed, but have thrown the burden of proof on the prosecution. General G., then, took upon himself the odious part of an *informer* ! He wished to have me cashiered by a court-martial for *sending him a challenge*—for, that sentence, and no other, can be rendered, if a charge of this sort be supported ! This was his brief argument for settling the question of rank between us. This was “the paper bullet” that was to destroy me !

But General G., though he urges *my official avowal* of the challenge as a sufficient ground for cashiering me, denies having known, at the time, he had been challenged ! It is impossible to comprehend his double crime of falsehood and equivocation, on this point, without contrasting its true history with a view of his letter.

I had heard, in the western country, that he had charged me with an act of great unfairness,—nay dishonour, in respect to the *third* article of the regulations, the history of which has been given above. Indeed it is the same accusation which is, there, triumphantly refuted. I addressed to him a courteous letter of complaint, July 25, 1824, not doubting that he would explain or retract ; for, I reminded him of most of the facts given above, to show the injustice of the imputation. In his reply, dated the following day, he, to my great surprise, added outrage to the injury complained of.—That he expected, and was ready to receive a challenge, did not admit of a doubt. We were now both in the city of New-York, and in the same street. Having my family with me, in one hotel, and he, his, in another ;—wishing for an opportunity to make some obvious arrangements, and expecting that he would be

glad of a similar opportunity, I promptly sent him a sealed note, to say that, in a very few days, (on the arrival of a military friend whom I had sent for,) he would receive a note of a more specific character from me. I set about making the arrangements alluded to, and supposed him to be similarly employed. But, again, to my great astonishment, after that note had been in his possession not less than twenty-four hours, it was returned unopened by his aide-de-camp, to one of mine! We were both, it will be remembered, in the same street.—Supposing that he had objected to the *etiquette* of handing him a sealed note, when he looked only for a written, open, direct challenge, delivered in form; and indignant at this new outrage, I instantly engaged the first friend at hand to take to him such a note. That friend immediately waited upon him, and tendered “a direct communication from General Scott.” He replied, “he could receive *no* communication from General Scott, until the official point between them was settled.”—There were several persons privy, at the moment, to this transaction, who must, if called upon, testify, that General Gaines *knew*, and *acknowledged that he knew*, the “special communication” was a challenge.

It will be curious now to observe, with what a mixture of falsehood and equivocation, this *public informer* manages his notice of the same affair. “I never, to my knowledge, received a challenge from General Scott, or any other officer,” [with a long confession of his amiability, &c.] “I do not feel at liberty to mingle the discussion of a question of rank with the gasconade of any man who *ventures* to speak of a challenge.” [He had impeached my honour and fairness as a man.] “I did receive a *letter* from General Scott, which I returned *unopened*—it was not however *mentioned* to me as a challenge.” [True: but not a word about the “*special communication*” presented by my friend.] “Although I have no knowledge of ever having received a *challenge* from General Scott” [that is, he did not know the *sealed letter* was one;—not a syllable about the *special communication*].—“yet I will credit his statement in this case so far as to admit, that

he may have sent one ;”—[that is, again, the *sealed letter* ;—no allusion to the *special communication*] “ and I hereby agree,” &c.—the result of which is, if he can persuade himself that the interests of the army, and those of his beloved country, do not forbid his risking his most valuable life—why, he may—“ without ever having *committed* himself ”—do what ? Deliver over again his homily upon controversies of “ a gladiatorian aspect ;”—upon “ the reasons recorded in all written law upon the subject ;” on the modes of exalting himself “ in the hearts of his countrymen ;”—on the necessity of being “ just and true,” instead of being “ always ready to take away the life of his fellow-man, who detects him in acts of injustice and falsehood” !—“ Hie thee, gentle Jew. This Hebrew will turn Christian ; he grows kind. *Bassanio*. I like not fair terms and a v——n’s mind.”—But I beg pardon of the Department for this sally. I will add but a remark or two more.

If General Gaines meant to rely on either meekness or courage, instead of their *opposites*, why did he answer my courteous letter of complaint, in the language of outrage ? Whence his volumes in print and in manuscript, of sturdy contumely and low revenge ? Would a christian, or even a heathen philosopher ;—would a *soldier of honour*, have done this ? *No !* All must reject him as a hypocrite unworthy of either fraternity—as a man of mere “ words, words, words !”

February 24th. Within a few hours past I have received from the Department the papers mentioned in a preceding note.

The letter of General Gaines, Oct. 25, 1826, to the Department, which I now behold for the first time, fires me, if possible, with increased indignation. I had thought that his versatility in the arts of violating every principle dear to the honour of a soldier, had been exhausted. To the new talent which he has displayed, I will not, however, give a name till it is fixed on him by demonstration.—The letter (copy) before me, makes 20 pages !

He opens on the subject of brevet-rank ; solicits the early attention of the President of the U. S. to his case ; tells of his having been *favoured with the views of the Secretary of War on the subject at his house*, January, 1826 ; mentions his silent, confiding expectations in the President ; and adds, that he would not again break through that silence but on account of other officers—those of regiments. This is most confiding and most disinterested ! But before I proceed further, let it be remembered, that this letter was intended as much for secret circulation among the classes in the army which are mentioned—I mean the writer's *supposed* partisans in those classes,—as for the eye of the Department. My first knowledge of it was received, as has been seen above, through a letter from an officer at the Infantry School of Practice near St. Louis, where the circulation of the incendiary letter was detected.

The next six pages are exclusively devoted to the *captains* of the army—a numerous class, to whom the writer addresses himself manifestly in the belief, that they may be won over, and formed into a party against *me*,—who, for the moment, however, he prudently keeps in the back ground. He tells the captains, that they constitute the *most essential grade* ; that their pay is inadequate, a pittance—reminds them of their talents, experience, gallantry, integrity—sufficient to fit them, in every respect for the *higher*, and even the *highest commands* ; contrasts them favourably with *bureau officers*, and a *splendid staff* ; depreciates the quarter-master's department—more *military mind* required at the head of a company ;—General Regulations, in respect to *company books*, impose cruel hardships on captains—(the first hint of the writer's purpose !) Returns to the captains, and the comparison with the quarter-master's department. Again to the disadvantage of the latter ;—the soldiers helpless, but may safely confide in the talents and fidelity of their captains ; the latter, after five years, to be selected (with field officers) to be quarter-master general, commissary general of subsistence, adjutant-general, and inspector-general.

Next he turns his parental regards on the brevet-majors,—also a pretty numerous and efficient class; and here his purpose against me opens more fully. This class of officers he hopes, it would seem, to enrol at once. He tells them, (for be it remembered, what he addresses to the War Department is intended for circulation in the army—that is the manner of his sedition—) that “the manifest intention of the *laws* [relative to the pay and emoluments of brevet-rank] has been defeated by General Regulations.” (*Note.* These topics are resumed in the peroration.) He then interposes, although his letter is not an *inspection*-report—an elaborate panegyric upon a brevet-major, whom he knew to be a personal enemy of mine (though I believe an honourable one) and to whom, no doubt, a copy of the letter under review, was sent directly, or indirectly, as soon as the original was despatched; for that major belongs to the School of Infantry Practice near St. Louis, whence I derived my first intelligence of the letter.

And here am I not permitted to conclude, that other copies have been distributed with equal *judiciousness*? I mean no imputation on that major, nor on any other officer who may have received a copy of the harangue with which accident has brought me acquainted; but I will maintain, that such a production coming from an individual high in rank and command; bearing too, upon the face of it, the *address of the Secretary of War*, is well calculated to make a deep impression on the minds of junior officers, whatever may be their honour and intelligence.

This *military demagogue* having, as he flattered himself, stirred up a spirit of mutiny against me, seems to say—“Patience, gentle friends!”—“It is not meet you know” how much I love you; “I am no orator, as Brutus is; but, as you know me all, a plain *blunt* man;”—now suddenly turns upon me and discharges, at once, his loose rabble of accustomed accusations!

The first class, dug from the mire of abuse, in which I find them, as usual, deeply embedded, are these:—

13. 14. That the “manifest intention of the laws” giving pay and emoluments to brevet-officers, “has been defeated by *General Regulations*.” This he brings home directly to the brevet-major above alluded to ; and endeavours, by sympathy and interest to bring it home to every *other* brevet-major. Then as applicable to *all* brevet-officers, he charges it as a crime founded on *secret* hostility to him, that I had not inserted section 4, act, July 6, 1812, in the *appendix* to the *General Regulations*.

13. The “illiberal construction of the law” can only apply to No. 1124, relative to pay and emoluments.

Now General Gaines *knows*, that both he and I, as early as 1820, before my compilation was published, protested, in *our own* cases, against that very “construction of the law.” He, therefore, absolutely knew *well*, that I was not its author ;—that it was a construction and a regulation before that compilation existed ! And here I will add, that before I knew of the charge I am now combatting, I had incidentally stated my exertions in 1825, (united with those of the Paymaster-General,) to get that construction altered,—more particularly to benefit the brevet-majors. See above, p. 13. So in December, 1825, on the request of certain Captains, I addressed an argument in behalf of that rank of officers, to the chairmen of the two military committees (with an apology) accompanied by a *projet* of a bill,—for which I received the polite acknowledgments of the chairmen ; and which same *projet*, as I am informed, has passed one house of Congress at the present session. General G. was in Washington at the time my letters reached that place ; and, probably, having heard of them, has addressed an *harangue* to the *Captains themselves* !

14. But I neglected to insert section 4, act, July 6, 1812, in the *Appendix* to the *Regulations* ! The charge heretofore combatted and refuted, was, that I ought to have referred to this section in the *third article* of that book. Let this contradiction pass. My object is not solely to show, that Gene-

ral G. is inconsistent with himself; but that he is in flagrant opposition to truth and justice.

I have already demonstrated, under the second specific imputation, (above p. 16,) that section 4, act, July 6, 1812, imposes no *restriction* on the rights of brevet officers, in respect to *commands*, and that it is *superseded* by act, April 16, 1818, and No. 1124, of the Regulations,—in respect to the question of *pay and emoluments*. Why then insert that section in the Appendix to the Regulations? True, the section is the *original*, and may be, an *existing* authority by which the President and Senate might *confer* brevet-rank. But was not Major Cross, at the instant of my omission (winter of 1824-25,) instructed to collect and publish, *by authority*, all laws whether repealed or in force, relative to the army? And has not this work (executed with great judgment and ability) been accordingly published, and placed in the hands of every officer in the service? I objected to place in the book of Regulations (for the reason last given, and because I did not wish to swell the volume unnecessarily) the acts which will be found in its appendix; and also, the article relative to the Military Academy; but the late Secretary of War thought it desirable that I should give the laws of *daily* reference in the army—such as the rules and articles of war, the act fixing the military peace establishment, &c.; and I, as in duty bound, complied. Was it for me, under such circumstances, and in a mere *army manual*, to point out to the President and Senate the *original* authority under which brevet-rank had been *conferred*? Does not the act, April 16, 1818, which I *did* publish, sufficiently indicate to those high branches of the government—supposing either ever to look into such a *manual*—that the power, in question, is in full existence? And, did my omission of an act, *repeal* it? But I exhaust myself on this miserable slanderer. The sentiment of manly indignation, in my breast, is succeeded by all the lassitude of contempt.

15. General Gaines next recites the declaration from my letter, January 1, 1825, (printed in his pamphlet,) in which I say:—"the 61st article of war only operates a restriction

on the brevets of *regimental* officers. As Major-general, or as Brigadier-general, I belong to no particular regiment or corps. My brevet-rank is, therefore, in law, as unrestricted, in respect to *command*, as the rank of Major-general Brown." It was to make good this position that he says, "I found it "essentially convenient" to omit section 4, act, July 6, 1812! My proposition, however, he does not dare to combat by argument, and his malignant insinuation I have destroyed. He adds, "By *that* law (the same 4th section) it will be seen, that all officers, generals and all, are subject to the same laws." This, coming from any other source, and standing by itself, would have looked very like a truism. A simple reference to the section will nevertheless show, that the proposition is false. He proceeds:—"All are subject to, and all are restricted by, the 61st Article of War." If he mean here *Generals* and all, his letter, Oct. 25, 1826, not only contradicts me, but also his letter, Jan. 11, 1826, as I have shown above. (pp. 14, 15.) Again, he contradicts his letter, Jan. [30], 1825, (printed copy, pp. 10, 11.) and once more I suppose him to contradict another letter to which he alludes (at the page last mentioned) thus:—"I have *admitted* in my letter to the Department of War, of the 30th April, 1821, more than my further reflection will allow me *now* to admit." And a little lower down on the same page, after giving me the memorable lie on the conjunction *as* (and on which he *there* mainly places his case) he connects the 61st article with the 62nd, and says, that *these* "embrace the very foundation of the primary principles of brevet-rank in our service." He then proceeds (precisely according to my construction of the 61st Article) to apply his "principle" "to all *regimental* officers, having brevets, even to the rank of Major-General. *Regiments* are the proper *corps* of such officers. Thus does General Brady's brevet, as brigadier, and General Atkinson's former commission of brigadier (recognised equally by the 61st Article of War) entitle them to," &c.—To these cases he might have added that of brevet Major-General Macomb, Colonel of the Corps of Engineers. I belong to no particular regiment or corps.

I have given this formidable list of citations to show, that, in truth, General G. knows not on what to rely in support of his pretensions to seniority over me. He admits, asserts, retracts, re-asserts, and contradicts himself as he does every body else, but still has "more last words" of abuse for me. There is, however, a manifest design in all this. If he fail to crush me by the mere operation of piling up epithets, and giving to the question "a gladiatorian aspect," (his words) he, at least hopes to involve it, (as he has said in a letter deprecating *paper controversies*) into "labyrinths of inextricable confusion." I merely wish, in this place, to expose his motives. The simple clew of *extrication* shall be furnished under another head. I return to his letter, Oct. 25, 1826, so lately received.

16. The next topic is, the *oath of an officer*. This General G. cites;—confesses himself as usual, to be the amiable possessor of all the virtues;—descants on *gladiators*; on *ancient Roman anarchy*, (his words) and "such branches of learning" (not his words)—but in the mean time states, that *he* has taken that oath; and that if *I* also have taken it, then *am I guilty of one of the highest of crimes*. This accusation, though hypothetical, would, if made by any other officer, require at least a serious contradiction. It is, as will be seen, not accompanied by any specification whatever, and must, therefore, refer exclusively to the matters already discussed, (in relation to the Regulations—and, perhaps, the challenge) and on which he has himself been brought to condign shame. Charges so made cost but little manual labour; whilst to follow and refute them has a striking resemblance, in point of nausea, at least, to *one* of the labours of Hercules.

But I have a charge to make against General G. in respect to that oath, which is both specific, and substantial. I had designed to place it under the second *general* head of this review—its technical position; but I shall obey the laws of natural affinity, and insert it here. The proof, in support of this charge, would, if it stood alone, be sufficient to settle the

question of rank between us, and that too, independently of the point of *character* involved.

This is the conclusion of that oath :—" I will *observe* and *obey* the orders of the President of the United States, and *the orders of the officers appointed over me*, according to the rules and articles of War." *Cross' Mil. Laws pp. 120, 158, &c.*

Now my brevet, or commission, has these words :—" *To all who shall see these presents, greeting : know ye, that I [the President] do hereby confer on Winfield Scott, of the army of the United States, the rank of Major-general, by brevet, in the said army, to rank as such from the 25th July, 1814. [Then follow the causes or inducements.] "And I do strictly charge and require all officers and soldiers under his command to obey and respect him accordingly : and he is to observe and follow such orders and directions, from time to time, as he shall receive from me, or the future President of the U. S. of America, and other officers set over him, according to law, and the rules and discipline of War."* (Note. A "brevet" conferring *extra* rank, and a "commission" conferring ordinary rank, are (as the words signify) substantially the same. For example, all the words *quoted* and *underscored* above, are common to both :—*both* are signed by the President, and countersigned by the Secretary of War, under the seal of the War Department ; and, finally, a brevet is as much founded on express law, as an ordinary commission.*.

General Gaines's brevet, as indeed every other army commission, must contain every important expression above, with this difference :—his date of rank is, August 15, 1814. I am then by twenty-one days (*one* would suffice) in the language of the oath, "*appointed over him* ; or to quote from his brevet—"Set over him according to law, and the rules and discipline of War."

* My brevet is in the War Department, with my other papers relative to the question of rank. The above is given from a printed form before me. I have, of course, filled blanks with my name and date of rank. The *inducements* to the rank being *complimentary*, are omitted.

He has taken the oath. He admits the fact. Contrast now that sacred obligation, and the solemn injunction to be found on the face of all his commissions, laid upon him by the constitutional "commander-in-chief of the army and navy of the U. S."—with his *recent* endeavours to resist my right to command him! Commentary on the enormity of those endeavours would be superfluous.

But, perhaps, he will attempt to excuse himself under the words "according to the rules and articles of War" in the oath, or the words "according to [law, and] the rules and discipline of War"—to be found in all brevets, or military commissions.—He shall not escape on this ground. Nay nothing short of an open and full confession of gross ignorance shall take him out of the awful position which he has assumed. He has admitted (letter, Jan. [30] 1825) that the rules and articles of War, or rather, the 61st article of War, is the *only law* on the subject. True, in the *printed* copy (*p.* 10, *pamphlet*) he has foisted in " [added to that of July 6, 1812.]" But this was merely to prevent that letter from contradicting another (Jan. 11, 1826,) in which he gives up the article, and substitutes section 4, July 6, 1812. (*Pamphlet p.* 24.) I having shown, however, that that section has nothing to do with the subject, (*see p.* 16. *of this review*) I here pass it by, and return to the 61st article.

Now I will put a case which shall illustrate the *oath* and the *commission* to the satisfaction even of persons the least accustomed to consider questions of this kind. I will suppose General G. to be the Lieutenant-Colonel of the Corps of Engineers with his present rank of major-general by brevet, from August 15, 1814. General Macomb is the actual *Colonel of that Corps*, with the brevet rank of major-general, Sept. 11, 1814. His name would, therefore, be printed above that of General G—the older major-general, in the army, by nearly a month. Let us farther suppose that these officers are serving together in that corps, and without admixture, or junction of other regiments or corps; and that General G. should claim the command as being *appointed over*, or *set over* Ge-

neral Macomb in the army. The latter would immediately refer to the 61st article, in which the case is expressly excepted and provided for ; and reduce General G. to obedience *within* the corps. But add other troops, corps, or regiments to the engineer corps. The *exception* would no longer exist, and it would be mutiny in General M. (I beg pardon for the supposition) to resist General G., who, as his date of rank, *opposite to his name*, shows, is *appointed over*, or *set over* General M. *in the army*.—There is not an officer who will dispute this point. Indeed, similar cases almost daily occur.—But once more let it be supposed that *I* had arrived with the regiments or corps which joined the engineer corps ; or that *I* happened to be present with those generals, on duty, *in any manner*. It would be mutiny in either, or in both, to resist my orders ; being, by commission, or brevet, *appointed over*, or *set over* both, *in the army*. What ?—Shall the fact of my not belonging, as colonel, or lieutenant-colonel to some *regiment* or *corps*, place me on a worse footing than General G., who, according to the hypothesis, holds a commission in a *corps* or *regiment*, when *I* am by both of my commissions *above all corps and regiments* ?—A case very like this occurred on a memorable occasion. All three of the individuals whom *I* shall name, belonged to *regiments* ; and in the British army, whence we derive the institution of brevet-rank and our article of War for its government, all generals are such only by brevet.—Lieutenant-General Wellesley (Wellington) commenced the battle of Vimiera. Pending the action, his senior, Lieutenant-General Burrard, arrived ; but from delicacy towards Wellington, who had made all the arrangements for the victory, would not interfere. Before all the advantages of the first success were secured, Lieutenant-General Dalrymple came up, and assumed, by the seniority of his brevet, the general command.—If the article of War did not restrict the rank of Burrard, and Dalrymple, who belonged to *particular* regiments, how can my rank be restricted by an article, in every respect the same, when *I* have *no* regimental commission ? If there be any restriction in law, either

express, or by necessary implication, 'on my rank, such as existed in the supposition above, (in the first case between Generals Macomb and Gaines) let it be produced. On the face of my commission there is no intimation of the sort. On the contrary, my rank, *there*, is express and absolute.—Such is the principle of the rules and articles of War; of "the rules and discipline of War;" and such is "the custom of War in like cases." For, if General Gaines were to resist my authority, and were brought to trial on that charge, a part of the oath of his court would be as follows :—"You will duly administer justice according to the provisions of 'an act establishing rules and articles for the government of the armies of the U. S.' without partiality, favour, or affection, and *if any doubt shall arise not explained by said articles, according to your conscience, the best of your understanding, and the custom of War in like cases.*"—*Cross's Mil. Laws*, p. 136.

Could General G. before a court, on such a charge, show a case so clear as to exclude all doubt,—or rather, could he hope to excite a "doubt" in his favour?

The universal practice and "custom of War in like cases" in the British army, may be inferred ;—1. From the identity, in substance, between our articles of War relative to the question. 2. The Regulations of that army already quoted above (p. 18.) 3. The case which occurred at Vimiera. 4. From the following passage in SAMUEL, *on the British Army*.

"In other words, [he has just given a paraphrase of the British article] *brevet-rank or command*, for they are *mutative terms*, is declared to be effectual for every military purpose in the army at large, but of no avail in the regiment to which the officers holding it belong, unless it shall, in all, or in part, be mixed or united for a temporary purpose with some other corps." Page 612.

So General Washington, in a letter (before quoted) on a question of *brevet-rank*, expressly says :—"Military rank and eligibility to military command, are ideas which cannot be separated. Take away the latter, and the former becomes an unmeaning sound."—*Rogers' Am. Biography*, p. 323.—Ge-

neral Washington spoke of a *regimental* officer, Brevet-Major Macpherson. Hence his measured expression "eligibility." Had he been giving his opinion on the brevet of an officer belonging to no particular regiment or "established corps," but equally *above them all*—he would have called his rank *absolute*.

General Gaines speaks with great contempt of "English precedent," and of arguments "of *foreign origin* and not applicable to our laws." But it happens, that the law in the present case, is the same both in our army, and that of England. One might imagine, that he had never been in a court of ordinary judicature, or seen a book of American reports. —I shall oppose to his illiterate sneer the highest authority—that of the man who was "the first in *war*, the first in *peace*, and the first in the hearts of his countrymen."—It is the same letter just quoted on brevet-rank.

"The *practice* in other armies, in all cases not expressly provided for, is the best standard by which we can form our notions, and it would have obviated many difficulties if it had been better known, or more attended to. If particular officers are to depart from that, and set up new distinctions, as it suits their interests, or fancy, there is an end to all order and subordination."

I shall give under the second general head an uninterrupted current of *American* precedents, in support of the foregoing views, which cannot be resisted. With all of these General G. is fully acquainted, and to one of them at least was a party. He will do well to look to his *oath* rather than yield to blind passion and "interest." As yet, I acknowledge he has not dared to commit the overt act, alluded to. But the inception of the crime is confessed.

17. Towards the close of the letter, October 25, 1826, General G. pronounces a panegyric on the late Secretary of War; offers a compliment to his successor;—says, that the former "committed some errors, will not be denied; that he was inadvertently drawn into these errors," &c. A little lower

down he adds,—the Regulations “wrest from some of our first rate soldiers and patriots the pittance which the brevet-laws authorise ;—a pittance, that when added to the pay of a captain, would insure to him not more than one-third of the amount paid to the insidious adviser and compiler of lawless regulations.”—The precious demagogue! How he must have burned with impatience to despatch his harangue to all who had griefs to commingle with his own! The mail to the camp near St. Louis seemed not swift enough for his revenge! Thanks to accident—or rather to an honourable soldier, the incendiary is exposed, and I will brand his every hand and cheek with the infamy they deserve!

It has been already seen, that I am not the author of No. 1124, the only regulation in the book, on the question of brevet-pay and emoluments; that it was nearly contemporaneous with the act of 1818, which it expounds; that the exposition excludes the act of 1812; that General Gaines knew those facts; that both of us protested against the exposition in our own cases as early as 1820—(in truth, we *exchanged copies of our protests*) and that I again (having called Colonel Towson to my aid) exerted myself, in 1825, to get the exposition altered—*more particularly with a view to the brevet-Majors!* I will now add, that the files of the public offices, at Washington, will exhibit General Gaines’s intense zeal in obtaining his *own* pay and emoluments; and that, finally, *he* succeeded to the same extent that *I* succeeded! On this point is it necessary for me to say more? Yes. A word as to Mr. Secretary Calhoun.

In the winter 1824—25, I revised two copies of the Regulations; carried some twenty pages at a time to the War Office; discussed the general principles with the Secretary; settled with him the alterations and additions to be made; executed his instructions, and, on the spot, filed, in the Department, one set of the pages so revised—keeping the other set to print from. It will be seen I was *then* fully aware of General Gaines’s envy, and habits of slanderous misrepresentation.

But Mr. Calhoun was induced by courtly attentions to favour my claims to "brevet-pay and emoluments! The insinuation is ingenious, and covers much ground. In respect to time, &c. it was no doubt thought by the writer, to possess all the merit of a most lucky *apropos*. But, although his letter was kept from my knowledge till accident detected a copy in Missouri, I will not believe that his *sycophancy* has availed him any thing—whatever *prejudices* his monstrous assertions against me may have excited.

In 1821—22, General Gaines and myself, on an opinion of the Attorney-General, partially succeeded in our claims to brevet-pay and emoluments, against the *decisions* of Mr. Calhoun—who, to the last, was opposed to those claims. Mr. C. by a letter dated, Jan. 21, 1822, *Document* [88] immediately laid the whole matter before the military committee of the H. R. It was, I think, the April following before I had seen, or heard of that document. I was then in Philadelphia. Regarding Mr. C's letter as a *protest* against the opinion of the Attorney-General, I immediately addressed a spirited, but respectful letter of *complaint* to the Secretary, and begged that it might be transmitted to the same committee. This he refused to do, on official considerations; and sent back my paper; intimating, that I could send it to the committee, unofficially, if I thought proper. Accordingly I enclosed it to a friend in Congress, who submitted it to some, or to all the gentlemen of that committee. The paper is still within my power, and judging from the remarks endorsed upon it, within the committee-room, was not wholly without effect. Let it be remembered that General Gaines was equally interested in this matter with myself. Did Mr. Calhoun favour the claims of either? Or dare General G. plead ignorance of the public document cited?

I never discussed personally, or through a friend, either with the late President, or the late Secretary of War, either my claim to brevet-pay and emoluments, or my claim to brevet-rank, excepting the latter question with Mr. Secretary Calhoun in the War Office, on one of the three last days of his

administration. Those claims were always advanced in written arguments, now on file in the Department—never in *private* interviews at private houses ! I ask that my letters may be examined. If one word of homage, or even a compliment, to a man in power, or to *one likely to be in power*, be found, let it be produced to my disgrace. No ! I have ever scorned, and I shall ever scorn the agency of such means. My letters will be found to breathe the spirit of a freeman—who, though cheerfully yielding himself to the code made for the government of the army, would sooner suffer death than sacrifice to Power one particle of his dignity as a man—no matter by whom that Power may be administered. I speak advisedly. The code is before me.

Turn now to any one of my slanderer's letters which have been noticed—particularly to that of January [30], 1825. This is his *chef d'œuvre*. He employed nearly four weeks upon it—in reply too, to an argument, rigorously technical ; without one flower of abuse ; without vanity or self-complacency ; without one syllable of sycophancy. He had, however, but recently *declined a challenge*, and hence the desperation of *his* manner.

The *address* of his letter is, itself, a capital stroke of sycophancy. I had had the simplicity to direct my argument through the ordinary official channel—the Adjutant-General. General Gaines overleaped that officer, and as a mark of his particular *respect* and *confidence*, addressed himself at once to the General-in-Chief. I shall cull some few specimens of a similar character from the body of the letter, not omitting the evidences of his vanity and egotism.

Looking with eagerness to the moment of publication, which has since been seized, he woos all the world with the most assiduous courtesies. Congress is that “honourable and enlightened body ;” he laments over several distinguished officers named, who were killed in battle—only as a compliment to their *living* relations ;—compliments the present Captains of the army ;—the Senate is, “that august body ;” offers his homage (Jan. 1825) to “the able head of the De-

partment of War ;” the three *living* ex-presidents, and Mr. Monroe, (Jan. 1825) “just and enlightened men ;” Mr. Madison was a “venerable chief magistrate ;” conferred on the writer a brevet “unsolicited ;” the people’s “representatives promptly sanctioned the act, by their spontaneous vote of approbation and thanks ;” “heartfelt gratitude to my country ;” compliments General Brown—the sycophant never believed his brevet *equal* to the “complete rank” of General B. ; compliments the whole country—*else-where*, “arbitrary power ; *here* law governs ;”—“takes occasion to say,” he never solicited rank or promotion, &c. ; *takes occasion* also to tell of his “long series of the most trying and important services ;” of his “long habitual attention to duty ;” narrowly escaped an opportunity of great distinction, when a captain, in the pursuit of certain Creek Indians, “who saved themselves by a precipitate retreat through the cane-brakes of Alabama ;” he is “honoured with a sword to protect and defend my country and her laws ; when I neglect, or forget my duty, then may my country forget me !” “*I* had saved the gallant remnant of *your* division, General, [General Brown] after *your* wounds had compelled you to leave it, and in doing this, *I* led it to a victory in which the enemy acknowledged a greater loss than at any other place on land during the war, *except at New Orleans.*” (The reasons of even this exception immediately follow.) “All who know Jackson, [meaning General Jackson] know that the honour of a soldier, or citizen, could never be otherwise than safe in his hands. He had the wisdom and virtue and firmness, to do right, and to abstain from doing wrong.” (Let the precise time at which this was said be remembered ; Jan. 1825 !) Then follow more compliments to captains, including “*lieutenants ;*”—the writer *modest* at dinner parties ; “in common with every patriot,” no slave to *etiquette* imported from Europe ; compliments every body—has “the happiness to live in a Republic where every citizen is politically and socially equal ;” compliments “officers of all grades, including cadets ;” has great contempt for “a Knight of the Garter,” or of the “Golden

fleece ;” also, for “ English law and English precedent ;” the “ course” of the Secretary of War (Jan. 1825) “ dignified and impartial”—with homilies, on the moral duties, without number, and which defy all quotation !

Once more I beg it may be remembered that this character of General Gaines’s *reply* was pointedly exposed in my *rejoinder*, Feb. 5, 1825, and in which I also distinctly asserted, on internal evidence, that the reply was *intended* for publication. I did not, however, predict that he would, in publishing, *suppress* my rejoinder !

Under the first specific head above, (p. 11,) it will be seen that I quoted a note from Mr. Secretary Calhoun, to show, that General Gaines assisted at the reading of the manuscript copy of the Regulations in 1820, at the time the *projet* received the sanction of the Secretary ; and, also, that paragraphs two and three, third article, did not pass *sub silentio*, but were actually discussed and amended. It will also be seen that I there quoted a passage from General Gaines’s letter, Jan. [30], 1825, in which he says—in the year 1821, “ a printed copy of the Regulations for the *first time* exhibited to my view the *ambiguous* paragraphs, embracing the before-mentioned effort of General Scott to contravene the law, and thereby to place himself above me ; and in a similar manner to injure the interests of most other officers of the army, having no brevets ; or being brevetted at a period subsequent to their *linéal juniors*.”

In fixing this distinct falsehood upon General G. I did not quote the words of the paragraphs, to show that they were as clear, and as express—not merely as *I* could render them ; but as clear as they could be rendered by Mr. Secretary Calhoun, General G. and myself. I will now venture to assert, that they are as free from ambiguity as any two paragraphs of equal length in the language. A simple inspection will establish the correctness of this assertion. I had not, however, when engaged in that part of this review, General G’s letter so recently (I will add, *accidentally*) received, or

I should have abridged, much, what is there given. Here are his own admissions.

“It is known that I, in the year 1820, assisted in the examination and correction of the compiler’s manuscript copy of a part of the general Regulations,” &c. [He then proceeds to praise some of them, which, however, he says had no *original* merit; condemns parts of others, and even takes some credit to himself for the humble alterations which he suggested.] “These [the errors] were strikingly exhibited in several articles; but in none to an extent so glaringly in opposition to law as in the *third article*, as I have hitherto shown. I contributed, with the concurrence of the Secretary of War, to effect some *alterations* and *corrections*; but many articles were left unaltered and imperfect. These remarks apply exclusively to the first sixty-four articles,” &c. *General Gaines to the Secretary of War, October 25, 1826.*

In the foregoing quotations I have not omitted a word which can in the slightest degree explain away the palpable contradiction. In truth, General G. had got both his conscience and memory so involved in the controversy; had written at different times such volumes on the subject, that he, in October, 1826, did not remember what, to blast my reputation, he had so broadly asserted in Jan. 1825. And so it ever is. Providence for the safety of the innocent, confounds the memories of the guilty.

He begins his admissions:—“*It is known that I, in 1820,*” &c. How was this known? Certainly not by his letter, Jan. [30], 1825. Why, when he obtained (about Jan. 11, 1826) a copy of my suppressed letter or rejoinder, he then saw, that I had disclosed, in argument, the fact of his having assisted in fixing the provisions of the said third article. It is probable, however, that he did not even then remember, and that it has not since occurred to him, that he, in January, 1825, had denied having seen that article, or rather, two of its paragraphs, in manuscript:—for, as the purpose of the denial had had, at the time, (in part, at least) the effect intended, it was no longer worth being remembered. Again; he saw

that I had not, in my suppressed letter, *specifically* charged him with the falsehood in question. He may therefore have thought, as I had partially overlooked it once, I might do so again, even if, by remote accident a copy of his pamphlet, or of his incendiary letter, Oct. 25, 1826, should ever fall into my hands.

But why did I not *specifically* charge him with the falsehood in my rejoinder, or suppressed letter, February 5, 1825? I will frankly admit that, in the hurry of the moment, the extent of the denial was overlooked. A copy of his reply, Jan. [30] 1825, in which it occurs, was received by me on the evening of the 3d February, or on the following morning. It was in 45 *manuscript* pages. I was at the same time engaged (at Washington) in revising the Regulations, and in correcting the proof-sheets of both the book of *Tactics*, and the book of *Regulations*—which labours I was required by the Department to complete without delay. I could, therefore, only hastily seize upon some of the principal points suggested by the *reply*—particularly such as bore on the question of rank; and I handed in the rejoinder, the morning on which it bears date—February 5, 1825. It was under those circumstances of haste, that I enclosed, with the rejoinder, a copy of my letter of complaint to General Gaines, dated July 25, 1824, already noticed—simply to show, in the way of argument, that General G.'s objections to the third article, were, at least *subsequent* to the year 1820, when, in candour, as in strict military duty, they ought to have been stated—if, in truth, there ever had been the slightest force in them. My letter of July 25, 1824, contained this paragraph:—

“1. Because, when the book received the preliminary sanction of the Secretary of War, you [General Gaines] were officially present, and (on repeated invitation) suggested alterations in the article in question, all of which (two in number) were promptly and cheerfully adopted by me.”

I added two other reasons to show why I was still loath to believe that he (General G.) had charged me with unfairness in respect to the third article. In his blustering reply, dated

July 26, 1824, which led to the challenge, he says of the three points:—"these reasons are emphatically *your own*." This may, or may not have been intended as a *specific* denial of the truth of the paragraph quoted; but if not, there is no *specific* denial in the reply.

One remark more. He says (Oct. 25, 1826) only about 64 articles of the Regulations were submitted for the preliminary sanction in 1820, and mentions the *third* as one of them. True,—but those 64 articles contain all the points to which he has since objected, except the paragraph at present numbered, 1124, and the point relative to the exclusion of the act, July 6, 1812, from the appendix of the edition, 1825;—and these exceptions have already been fully met and settled for ever.

In order that this review may contain within itself every thing within my reach, material to the points discussed, I subjoin a copy of Major Worth's certificate or note, mentioned above, (p. 21) and which has since been received.

" West-Point, Jan. 9, 1825.

" General: I have the honour to state in reply to your letter of the 3d instant, that during the month of September, 1814, being delayed by your wounds at Utica, you were joined at that place by General Gaines, and thence travelled in company to some point on the North river—that during the journey, in matters of etiquette, and particularly at a public dinner given by the citizens of Albany to General G. and yourself, General G. yielded in the most *punctilious* manner, what I deemed to be point of precedence, and a consequent admission of seniority.

" The impression is strongly upon my mind that the General once observed to you in my hearing, "the fortune of war has given you the rank";—it was, I think, at Utica, and during a very unreserved conversation between you.

" Considering the question of rank as settled by the dates of your respective brevets, it is not probable I should have remarked the circumstances above referred to, other than as evidences of a lofty and magnanimous spirit exhibited by

General Gaines towards one, who had run with himself the course of glory with theretofore but an imperceptible difference,—still a prior date of rank.

“Possibly I may have misinterpreted the language and manner of General Gaines; yet such was the decided impression upon my mind; and, I think, the subject was one of frequent conversation between Major Belton and myself, at that time aides-de-camp to the respective generals.

“I have, &c. &c.

“W. J. WORTH.

“To Major-General Scott, U. S. Army, &c.”

On receiving the *manuscript* copy of General G.’s letter to the Department of Jan. 11, 1826, (but which is not *certified*) I find a *postscriptum* not attached to the printed copy (*pamphlet* p. 25.) It is in these words:—

“P. S. I forwarded to the adjutant-general’s office, for the *information* of the Department of War and General-in-Chief, a letter, of which the foregoing is a copy—but having *since* understood that it had not been submitted to you, I have deemed it proper to send this to you.” (Signed) “E. P. G.” and addressed to “the Honourable James Barber, Secretary of War.”

On this I beg leave to offer the following remarks:—1st. I have been mistaken in fixing above, the *date* at which General G. obtained a copy of my suppressed letter, to which *his* of January 11, 1826, is a reply. He must have received it some time *before* that date, for, by the “P. S.” it seems the reply had been *originally* “forwarded.” It is probable, therefore, that the copy of my letter had been received through the mail, and *not* by personal solicitation whilst he was at Washington, in December and January 1825–26.—2d. It is, also, probable that General G. “after being favoured with your views upon the subject [of brevet-rank] in conversation at your house, in January,” 1826, (which determined him “to await in *silent and confiding* expectation the *final* decision of the President,” letter, Oct. 25, 1826,) *then* made the discovery, that his infamous communication to which the “P. S.”

is added, had not reached the Department, and that a copy might be useful in confirming the “views” with which he had been “favoured.”—3d. That when he, General G., took upon himself the *office of public informer* (see above, p. 31) he was resolved that *all* who had the power to cause me to be arrested and cashiered, for sending the challenge, should know, before the two years were out, that he was a ready instrument for that service. I am happy to have it in my power to add,—that his baseness in this particular at least, must have been *seen* and *felt*, and, therefore, *rejected*.

Let it not be concluded that the mere *struggle for a place a little higher in command*, has converted a friend into a deadly enemy. We have seen that the point of rank was, down to a certain time, yielded without discussion, and apparently without regret.—General G. came out of the late war with some applause; and in the common fervour of the country, was ready to do justice to a brother soldier. Since that period he has had the misfortune not even to remain stationary. Whilst all who were around, or below him (thanks to the stimulus of the Military Academy) have made advances in professional science and usefulness, he alone, has positively receded. In the Seminole campaign he acquired any thing but glory—or rather, if the rumours of that day are to be credited, he narrowly escaped arrest and punishment at the hands of his successor: and, on a more recent occasion, which arose in the same quarter, his conduct drew from the President of the United States, a *public reprimand*. This positive—not to speak of *relative* retrogradation, has disposed General G.’s mind to envy, and goaded him to revenge. Those just below and above him in rank, are the chosen objects of his malevolence. Hence his letter already noticed, against General Jesup; and hence also, the volumes of abuse, in print and in manuscript, which he has privately circulated to my injury.

The coincidences of his acts of hostility against me, with certain positions which I have occupied (it may be, more from accident, than merit) are strikingly illustrative of the character of this controversy.—(If there be *egotism* in the statement, it is *defensive*.)

In 1821, I published, under “authority,” *General Regulations for the Army*; or, *Military Institutes*. The book was received with approbation, and I lost, without suspecting it, for some time, the friendship of General G. In 1824, I was called—as he takes care to tell, “from a distant command,” to give, singly, a second edition of that book, and also to preside over a Board of Officers charged with the revision of the *Infantry Tactics*. It was, in passing through New-York to West-Point, on that duty, that I received from him the blustering letter proclaiming *open* hostility, and which led to the challenge.—In the winter, 1824–25, being engaged in printing, under the view of the Executive and of Congress, the two works mentioned, General G. gave (as if to recover his level in his own mind, at least) a character of extraordinary personal violence to his letter of Jan. [30] 1825. In the autumn of 1826, I was again called to preside, at Washington, over a board of militia generals and army officers, organized to report *systems of tactics* for the several arms of the militia, and also, *a plan of organization* for that branch of the national defence. This was, it seems, another outrage to his vanity;—bursting with envy and rage, he employed the very moments the board was in session, to write the most foul and deadly of all his productions (letter to the Department, Oct. 25, 1826) and immediately despatched, *at least a copy*, to stir up to mutiny against me, the captains and brevet-majors of the army. Is there aught of exaggeration in this narrative? If there be, I beg that it may be struck out: more than sufficient will still remain to establish every position I have advanced.

It is remarked by Hume, that after Harvey had demonstrated his theory of the circulation of the blood, not a physician in Europe who had passed his *fortieth* year, acknowledged the great truth, or conformed to it his *practice*. And so in the military profession. There are always minds, which, having lain too long in fallow, reject every attempt at improvement as an outrage upon their rigidity: the next step is, *revenge*—by opposition and traducement. *Gribeauval*, who reduced the service

of artillery and ordnance from chaos to perfect order and efficiency, was persecuted through life by the zealots of ancient error and abuse ; and *Guibert*, who gave to the grand conceptions of Frederick a developement and practical detail which were soon to carry the French armies triumphantly through the battles of liberty, died of a broken heart under the shafts of envy.

“ Mais tel est le sort commun des hommes célèbres, & des militaires illustres : placés entre la renommée & la colomnie, entre les ennemis de leur pays, & les ennemis de leur gloire, ils ont également à redouter les traits de l'envie, et les armes des combattans. Vivans, l'injustice les tourmente ; morts, la gloire les couronne.” (*Notice sur les ouvrages de Guibert, Vol. 1. p. ii.*)

General Gaines stands, pre-eminent, over a small *school of bigots* in our army ; and acknowledging, as I most cheerfully do, the immense distance which separates the brilliant labours of *Guibert* from my very humble endeavours in one of his walks, it will, nevertheless, not be the fault of my enemies, if I do not *closely* resemble him in the final scene.

It has been remarked by more than one individual of keen observation, that General Gaines on the subject of this unfortunate controversy, had the appearance of being deranged ;—that the question of rank had become the hallucination of his mind. Perhaps, it may then be asked, why the severity with which I have treated his aberrations ? What ! If a madman flies at my throat and attempts my life, shall I not break his hold, and chastise him into intellectual sobriety ?

I have now redeemed my pledge as to the *accusations* published against me. What more may remain in secret deposit, or in private circulation, originating in the same quarter, I know, nor care not. General Gaines can no longer excite my anger or indignation. Far different feelings now possess me on his subject. Let him then

“ his several way
Pursue, as inclination or sad choice
Leads him—perplex'd where he may likeliest find
Truce to his restless thoughts.”

II. Of the rights of brevet-rank in respect to commands.

I have already stated above, pp. 18, 42, that the institution of brevet-rank, together with the only *rule* for its government, or limitation, were borrowed by us from the mother country as early as September 20, 1776. (*See Cross' Mil. Laws*, p. 29, *Section XIII, Article 24*, and again the same book, p. 135, *Article 61*.) Let these two articles be compared with each other, and also with Article 1, Section XV, of the British Code, and the identity of the whole three, in every substantial particular, will be established.

But the same principle was *abstracted* and adopted, by the old Congress, as early as June 30, 1775. (*Cross' Mil. Laws*, p. 272, *Article XXXIV*.) This *abstract* gives a perfectly simple exposition of our existing Article 61, (act, 1806) and which exposition is in exact accordance with the views quoted above, p. 18, (from *Samuel* and General *Washington*) and with my arguments founded thereon.

The word *brevet* is French, derived from *brevetum*, low Latin, of *breve*, short (*Todd's Johnson*, 4to. edition). As used in the French language it obviously is sometimes to be translated *commission*, sometimes *letters-patent*. (*Dictionnaire de l'Académie*.)

In the British army, the noun *brevet* was borrowed more than a century ago, and used adjectively to make brevet-rank, signifying rank acquired by length of service, gallant actions, or other meritorious conduct, in contradistinction to regimental rank purchased with money; for in that army, regimental commissions may be bought from a cornetcy or ensigncy, up to a Lieutenant-Colonelcy. At this point purchases cease, and the higher grades, as Colonel, Major-general, (there are no brigadiers; Major-generals command brigades) Lieutenant-general, General, are, all conferred *solely* by brevet. But brevets are also conferred on grades inferior to that of Lieutenant-colonel, and *on* brevets as well as *on* regimental commissions; either in favour of individuals, on

special *inducements*, as in our service ; or, generally, in favour of all officers who may have served a given time in the same rank, whether by brevet or otherwise—which again corresponds with our *practice* in respect to regimental rank. Thus at intervals of four, six, eight, or ten years, (according to the general activity of the army) the king publishes in the official gazette (in the nature of an order) what is called a “Brevet;” conferring at once on every officer from Captain up to Lieutenant-general, who has held the same brevet or regimental commission the given number of years, one additional grade of rank in the army. This grade, or rank, is then carried to the next army list, as *army, or brevet-rank*. And hence, from the *brevity* of this process, compared with the numerous forms, certificates, and agencies, with which the *sale and purchase* of regimental commissions are burdened, the term *brevet-rank* in accordance with the primitive word *brevetum*.

(*Note.* I transmitted to the Department with my letter of Jan. 17, 1826, an “Albion” of July 16, 1825, containing, at p. 34, the general “Brevet” of 1825 ; also a copy of the British *Annual* army list, for the same year. The two, compared together, will support what is here said of brevets. The forms, &c. for the *sale and purchase* of commissions, may be seen in any copy of the British *general regulations and orders for the army*.)

In the British army then, the regular promotion is by brevet ; for, although the acquisition of rank may be quickened, up to the grade of Lieutenant-Colonel, by purchase, this is but accidental, not regular promotion. For example ; the Major of a regiment wishes to sell out, or he dies ; the senior captain has only the right to pay the difference, in value, between his captaincy and the majority. If he have not the money, the right passes to the other captains in the order of seniority.

But rank acquired in that army, by brevet, is, as I have shown above, p. 43, as effective, as regimental rank purchased with money—except only within the officer’s own regiment ; the *brevity* of the process not at all affecting the validity of the acquisition.

In our revolutionary war, there were several members of Congress, and many officers (General Washington himself among the number) who had actually served with the British army, and who, therefore, perfectly understood all the principles and usages of that service. Hence the institution of brevet-rank, and the rule for its government, were entirely and literally borrowed from the mother country. The institution was found a powerful incentive to the exertion of every faculty in that arduous struggle, and the cheap and appropriate reward of the success of those exertions. The Journals of that period will show, that the rank was liberally conferred on regimental officers, and also on brigadiers without regiments; not only as a reward for *special* acts of merit; but for *length of service* (combined with implied merit) precisely on the principles above explained. See a general "Brevet," Journals of the old Congress, Sept. 30, 1783; and for *special* brevets, the same journals, *passim*.

To show that the rank so conferred was not deemed lightly of, I quote the following:—

"*Resolved*, that no brevets be, for the future, granted, except to officers in the line, [not to persons in civil life] or, in *in cases of very eminent services*." Journals, Nov. 24, 1778.

"*Resolved*, that no brevet commission be granted to any officer, except with the consent of nine States." Journals, Feb. 20, 1779. (Congress voted *by States*, and seven votes constituted a valid majority in other cases.)

Such then was the institution borrowed from the parent country by the *patres conscripti*—the statesmen and soldiers of our independence—at the very moment too, of disruption—of awful conflict with that country. Ought they to have been told, that the thing was of "foreign origin;"—that the principles and usages for its government, were objectionable, because founded on "English law and English precedent?" Upon precisely the same grounds they might have rejected the principle of representation in government; the trial by jury; the writ of *habeas corpus*, and other such laws and precedents!

The last brevet conferred by the old Congress, was, in the case of *Lieutenant-Colonel* Harmar, July 31, 1787, who received at once two grades, constituting him a Brigadier-general, and in which *commission*, as Marshall tells us in the *Life of Washington*, Harmar made the campaign against the Indians in 1791. (*See below, the case of Butler and Harmar.*)

By the act, July, 6, 1812, (the commencement of our second war) authority was given to the President alone, to confer brevets for gallant actions, or meritorious conduct, or for ten years' services in any one grade. So much of this act as relates to the *inducements* to the rank, remains ; but by the subsequent law, April 16, 1818, the advice and consent of the Senate are rendered necessary. Brevets, however, conferred under the former law, are, as valid, as brevets conferred under the second law. All are, equally, founded on express law ; all have the same forms, and the same seal, with the same *expressed rights and obligations* as in the case of all other commissions.* (*See, above, p. 40.*) With these high attributes, can any thing short of an *express, pre-existing law*, impair the validity of a brevet? If such law exist, let it be produced.

General G. sometimes, as we have seen above, (pp. 15, 38) cites the 61st article, the origin and history of which, 'I have just given, "as the *only* law known to the army of the United States embracing the principles upon which brevet-rank and brevet command [added to that of July 6, 1812] depend." But I have shown that the words in brackets are not in the original ; but have been long since inserted in the *pamphlet* copy of his letter. In a subsequent communication, Jan. 11, 1826, he, for the first time, appends the act 1812, to the article of War, act, 1806. But in the last mentioned letter, he *twice* gives up the article of War as a restriction on *general officers'* brevets, and rests that restriction on the act so appended ; but here, again, he fails ; for, I have demonstrated

* The *form* of all military commissions has remained very much the same since the original was reported to Congress, Dec. 11, 1778.

that this act also must be abandoned. There is then *no* law restricting *my* brevet, for example ; for either as brigadier, or as Major-general, I belong to no particular regiment or corps, but am, by rank, equally above all regiments and corps in our service. For the meaning of the word "Corps," in this connexion, and, indeed, throughout the articles of War, see above, p. 17, &c. ; the 66th article, act, 1806, and, also, Article XXXIV, Resolution of Congress, June, 30, 1775.

Let us admit, however, for a moment, against all authority, and against all just construction, that brigades and divisions, mere temporary corps (even when formed for a campaign) are "corps" in respect to general officers' brevets,—in the same sense in which, under the 61st article of War, a regiment, or the corps of engineers, is an "established corps" in respect to the brevets of the lower officers serving *therein*.—We have, at present, a number of troops which, if so temporarily organized, would form more than four brigades, and, consequently, more than two divisions. I will suppose General G. to be at the head of one of these brigades or divisions—no matter which, and that I am at the head of another. Again, that we are brought into the same camp, or into the same geographical district or department ; and one or other of us must command. Well ; if the two bodies of troops are *corps*, by assimilation, as two regiments are "different corps" under the article of War ; then the precise case is provided for in that article—command shall be "according to the ranks given them [the two generals] in their brevets." But shall the union of the two temporary corps be considered as forming one "detachment" ? I have again only to quote the same words from the article : the case is again *expressly* provided for.

Now let the case alluded to above, p. 27, be considered. Col. Fenwick of the 4th artillery was serving with a part, or the whole of his regiment. When troops join, or act in concert, there can be but one head. Fenwick was the older officer by brevet, and Clinch the older *regimental* colonel. I believe Fenwick assumed the command, as a matter of course.

General Gaines, though the case was expressly provided for by the article of War, attacked the General Regulations, as I have intimated, and put Clinch in the command! On the case being referred to Washington, the decision was at once overruled, and Fenwick reinstated.—I saw the papers soon after the case occurred, but do not accurately recollect when.

I will here quote the entire article of War so often referred to, in order to superadd a few remarks.

“ Art. 61. Officers having brevets [or commissions of a prior date to those of the regiment in which they serve] may take place on courts-martial, and on detachments, when composed of different corps, according to the ranks given them in their brevets, [or dates of their former commissions] but in the regiment troop, or company, to which such officers belong, they shall do duty, and take rank, both on courts-martial and on detachments, which shall be composed only of their own corps, according to the commissions by which they are mustered in the said corps.”—*Act*, 1806.

1st. If the article be read, omitting the words enclosed in brackets, its application to brevets, strictly speaking, will be more distinctly perceived.

2d. The words enclosed in brackets relate to cases which frequently occur in the British army, and may occur in ours. Thus, Captain A. obtains with the proper sanction, a transfer from the 1st to the 2d regiment. No. 1299 of our regulations (and there is a similar provision in the British army) says:—“ Nor shall an officer be transferred into a regiment to the prejudice of the rank of any officer thereof.” Captain A. may, therefore, have to lose, in the 2d (say) a year’s rank. He would, in this case, however, have his former rank as captain, placed *opposite to his name* (in the army list, or register) in the nature of brevet-rank, and be “mustered in the corps” to which he is transferred, as captain, with the date of his transfer. This is what is meant by a “commission of a prior date.” (See Captain Baker’s and Lieutenant Maitland’s names, army register, pp. 10, 12—1827.) This exposition which, when thus presented, seems almost self-evident,

was first given by Major-General Macomb. It shows however, that many parts of our military code, can only be understood by a thorough acquaintance with the *practice and usages* of that army from which we borrowed it. That "practice," in the language of General Washington, "would have obviated many difficulties if it had been better known, or more attended to."

3d. It is perfectly obvious from the whole structure of the article, that *regimental** officers' brevets, only, are restricted, and that too, only within the regiment, or "permanently organized corps," (General Washington's words;) for, the moment the brevet comes in contact with officers of other regiments, it takes effect even over *senior regimental rank* of the same corps.—This daily happens, both in the American and British armies.

4th. Troops and companies are mentioned and included in the final general word "corps"; because, in the British army, as well as in ours, there have been independent troops and companies not attached to regiments—the "troop or company" being within itself, a "permanently organized corps." It was, therefore, necessary, on the principles of the article, to restrict brevet-rank within such troops and companies.—Brigades, divisions, and larger bodies, are not mentioned or anywise included*—either in the 61st, or any other article of War. For "independent companies" (of rangers, for example,) see revised *U. S. L. Vol. 4, pp. 506, 614; also, Cross' Mil. Laws, p. 273, art. xxix, and p. 276, art. lxiii.*

* Rule of construction. "2. A statute which treats of things or persons of an inferior rank, cannot by any general words, be extended to those of a superior. So a statute, treating of "deans, prebendaries, parsons, vicars, and others having spiritual promotion," is held not to extend to bishops, though they have spiritual promotion;—deans being the highest persons named (a) and bishops being of a still higher order." *Blackstone's Com. Vol. 1, p. 87.*

(a) "This construction must be presumed to be most conformable to the intentions of the legislature." *Christian.*—The 61st article is, moreover, it will be recollected, in the nature of a *restraining* statute.

Note. For "permanently organized corps," twice used above, read, "other established corps."

5th. I am, as brigadier, or as major-general, not "*mustered in the said corps*," nor in any corps.

And here I might, before any court of the union, safely rest my case—either on the 61st article, once *solely* relied upon by General Gaines, or on the 4th section, act July 6, 1812, which he has since so adroitly appended to that provision of law. But as he has twice obscurely referred to the 62d article, I will give him the benefit of the reference. He says:—

"To conclude, it cannot be denied that the 7th paragraph of the second article, and the 2d and 3d paragraphs of the *third* article of the General Regulations, compiled by General Scott, are positively repugnant to law, particularly to the 61st and 62d articles of the act of 1806, to which I have before referred." And that reference, in a previous part of his same letter, Jan. [30] 1825, is in these words:—

"The 61st and 62d articles of War embrace the very foundation of the primary principles of brevet-rank in our service. The operation of this principle cannot be denied to extend, according to the *letter* and *spirit* of the law under our present organization, to all *regimental* officers having brevets, even to the rank of major-general. Regiments are the proper corps of such officers. Thus does General Brady's *brevet*, as brigadier, and General Atkinson's former commission of brigadier, (recognised equally by the 61st article of War) entitle them to brevet-pay when on duty, and having a command according to their brevet-rank; whilst the proper corps of the former is the 2d infantry, and that of the latter the 6th infantry." *Pamphlet, p. 11.*

To every proposition contained in the last extract (omitting the letters and figures, "and 62d," I most cheerfully subscribe. The paragraph gives precisely my argument. But it will be remembered, that *I* belong to no corps. In General G.'s other letters which have, by accident, fallen under my observation, I cannot discover the slightest allusion to the 62d article, and here I have quoted every syllable in the letter, Jan. [30] 1825, on the subject. The two allusions, it

must be confessed, furnish a fine illustration of the "palpable obscure."

But, as I know not what effect his *obscurities* have produced, or may produce, on my rights, I shall at once bring into light and activity the 62d article, and turn it against my opponent.

"Art. 62. If upon marches, guards, or in quarters, different corps of the army shall happen to join, or do duty together, the officer highest in rank of the line of the army, marine corps, or militia, by commission, there, on duty, or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President of the U. S. according to the nature of the case." *Act*, 1806.

This article, also, was borrowed, Sept. 20, 1776. (*Cross' Mil. Laws*, p. 29. *Articles* 24, 25.) It contains the substance of the British 2d and 3d articles, section xv., and also the substance of the regulation, quoted above, p. 18. (*Note.* The miserable argument, entitled "*Brief Examination*," &c. asserts, that "the provisions of this article [were, in 1806,] new and important"! This General Gaines reprints (*in his Cincinnati pamphlet*, p. 22) and says, it "is from the pen of an able and experienced officer whose knowledge of military law is believed to be equalled by few men, and surpassed by none in America"! He adds, that he General G. "on reading it, pronounced it to be the clearest exposition he had ever seen on the subject"! But General G.'s puffs, like his censures, have become a little worn of late. I shall have occasion to recur to this *clear* "exposition."—At present I return to the 62d article.)

The article in the form, borrowed, in 1776, remained in force down to 1806, when it underwent some very slight modifications, which, though wholly inapplicable to my case, will be noticed.

1st. Union or concert of corps—upon marches, guards, and in quarters—that is to say—when they "join, or do duty

together." These include all the cases ; for, *camps* are mere places for sleep and rest upon marches, or in a campaign.

2d. "*Different Corps.*" These are, also, the words used in the preceding article :—the union of *different corps*, being one of the cases in which the brevets of even *regimental* officers are expressly allowed to take effect.

3d. "*The officer highest in rank of the line of the army.*" The expression in the article of 1776, is, "the eldest officer." General Macomb, who has, also, written on this subject, says, with plausibility, that the change was made to exclude officers of the *staff*. This may, or may not be a just exposition of the reason of the change. I am, however, as much an officer of the line of the army as Major-General Brown, or any colonel of a regiment. I am, and of right, *in the direct command of troops*.

4th. "*Marine Corps or Militia.*" These words are not expressed, though *virtually* included, in the articles 24, 25 of 1776. At any rate they can have no *prejudicial* bearing on my case.

5th. "*By commission.*" What commission? The ordinary commission "*by which* [an officer is] *mustered in the said corps*;"—a "brevet," or a "commission of a prior date"? *Neither* is particularly expressed, and therefore *all* are included. But if either be excluded, *which*? Shall a "commission of a prior date"—itself, in the nature of a brevet; or, an ordinary commission be admitted, and my brevet, for example, be excluded? It is not so expressed in the article, and on the face of my commission or brevet (as we have seen above, p. 40) the very reverse is set forth. If Generals Atkinson and Brady, with, or without their regiments, were brought into a brigade, or into the same district or department, so as to "join or do duty together,"—would not the commission or brevet of the former, in the absence of higher officers, make him "the highest in rank of the line of the army"—notwithstanding the elder commission of General Brady, as regimental colonel? The case of Fenwick and Clinch (stated above, p. 61) is in point, and similar cases are

of daily occurrence between regimental officers of lower rank, with brevets, who, from the fact of their being of *lower rank*, only meet on guards, courts-martial, and detachments. But still,—could brevets take precedence, or command in any case, unless they were “commissions”? The present officers of the topographical engineers, and the supernumerary lieutenants of regiments, all hold rank in the army *solely by brevet*; yet they take rank and exercise command. Could this be done, if their brevets were not commissions? Have not brevets, in the topographical engineers, been conferred *on brevets* (in the same manner as brevets were, for gallant actions, conferred on brevets)—and, could this have been done if the first brevets were not commissions? The cases of Swartwout and Burbeck will be stated in the sequel. These officers held the brevet-rank of brigadier, without other rank or commissions; yet both were employed in the command of troops, just as other brigadiers were employed—according to *grade and the dates of their commissions*. Brevets then, are, under 62d article, as under the 61st, *commissions*. They give rank and command *in the army*. They serve, in common with ordinary commissions, to render officers “the highest in rank of the line of the army.” Such is the universal practice of the American and British armies; of “the rules and discipline of War”;—of “the custom of War, in like cases.” See again the quotations given above, pp. 13, 43, 44.

But combatting as I am, I may not stop even here. I am to imagine the worst. My opponent is possessed of the “views” of the Department, and has spread over the whole subject so dense a shade, that possibly it may even yet be doubted whether a brevet-commission be, in truth, a commission!

Our resolutions and acts of Congress, use the terms “brevet” and “brevet-commission” only when it is intended to restrict the rank conferred thereby *within* regiments, or to restrict the receipt of pay and emoluments to particular cases which, would otherwise attach, as a matter of course, in all cases. There is no exception to this position, other than what may

be found in the mere delegation of authority to confer the rank. In all other cases whatever, the word "commission" is employed as a generic term, to include, indifferently, "brevet," or "brevet-commission"; "commission of a prior date," and ordinary commission. Indeed, the word "brevet" by itself, as I have shown above, from etymology, (*French*) as well as use, signifies *commission*. And so in the British articles and regulations; the same words, in the same connections, have the same meanings, as in our *borrowed* articles. Take the following quotations as proof:—

SAMUEL (p. 612) in commenting on the British 2d and 3d articles, section xv., (from which our 62d is taken.) says, in a paraphrase—"that the joint forces while they continue to do duty together, or while they remain in the same quarters, shall be commanded by the eldest officer by *commission* on the spot." (*Note.* I have not, at this moment, the British articles before me; but the work quoted, is of the highest authority in the British army.)

"All commands in the regular forces belong to the eldest officers, whether of cavalry, artillery, *engineers*, infantry, or marines. In case two *commissions* of the same date interfere, a retrospect is to be had to former *commissions*. (See *British general regulations and orders, for the army, p. 4, edition, 1822.*)

Now as we have seen that, in that service the brevets of "general officers and all" take effect on the junction of regiments;—that, in fact, general officers are only such by brevet, it is perfectly obvious that the word "commissions," thrice used in the extracts just given, includes *brevets*;—*commissions of a prior date, &c. &c.*

(*Note.* It is seen in the last extract, also, that in the British army, *engineer* officers, are put on the same footing, in respect to *rank and command*, generally, with all other officers. And so in the American army: not only this principle, but every other British principle (applicable to our army) regulating rank and command, was borrowed and adopted in 1776. This we shall see more fully, in a page

or two, in respect to the junction of regular and militia officers. But, in 1806, Congress, in the 63d article, made a material change in those rules in respect to engineer officers, (and, perhaps, in the 62d, as to staff officers) without changing another principle borrowed in 1776. Hence, an irresistible inference that it was intended, in 1806, to retain and preserve every other principle and attendant usage, originally borrowed from the parent country.)

I have shown, then, that brevet Major-General Gaines, (like myself) is equally a Major-General with Major-General Brown. In respect to the rights of *rank* or *command* the only difference between them, is, in the *dates* of their commissions. As to the words, "brevet," and "by brevet," they are applied merely to show, that General G. (like myself) is retained in service as a brigadier general; that he is borne on the army register as such, (with his *rank* and *date* as Major-general, opposite to his name;) and, that he is, under special provisions of law, to be *paid* as a brigadier, when not placed over a body of troops equal to a division. These are all the points of difference between Major-General B. and Major General G.; or between the former and myself; in other words, between an *ordinary* commission, and a *brevet* commission.

Whence then, I may now be permitted to ask, the compliment paid by General G. to the rank of General B. already mentioned? The former (in his argument addressed to the latter, against me) says:—"I have never believed *it* [his brevet commission] equal to that *complete* rank in the line of the army which *you* possess." And the sycophant adds:—"I feel no apprehension of being misunderstood by *you*, General!" No doubt, in General G's estimation, this self-debasement more than counterbalanced all my previous arguments. And to whom did he address himself? To one, whom it was known, would have a principal voice in settling the question between the two brevets! General Brown was the undisputed superior officer of the three; but General G. hoped to be recognised as senior to me in the rank of Brigadier-general. If, therefore, he could, by his most *disinterested admissions* so

far impair the validity of brevets, as just to leave him *the right to the pay and emoluments* attached thereto, he would, at the same time, nullify my senior rank, as Major-General, and thus effect his two great objects. But my rights are not thus to be *confessed away*, without my consent. I have exposed the stratagem. It is for others to defeat it.

In the fall of 1814, at Philadelphia, General G, in the language of the 62d article, being "the officer highest in rank of the line of the army, marine corps, or militia, *by commission there, on duty*," commanded Major-General Worrall of the Pennsylvania militia, then in the service of the United States. Why did he not say to the latter—"I do not believe my brevet commission gives me that *complete* rank which *you* possess, General!" No. The declaration would have been *against his interests*. He, without hesitation, therefore, exercised command over the veteran of the revolution, who was the older Major-general by several years. General G. recollected that the *seniority* of the militia commission was annulled by the express declaration of the 98th article of War, which enacts—that militia officers shall "take rank next after all officers of the *like grade* in said regular forces, notwithstanding the commissions of such militia or state officers may be elder than the *commissions* of the officers of the regular forces of the United States." General Gaines' brevet, then, made him the "highest in rank," "*by commission*," at Philadelphia, under the 62d article, as well as the 98th; and it made him not only of the *like grade* with Major-General Worrall, under the 98th article, but at the same time the superior officer, notwithstanding General W's was the *older* commission, and an *ordinary* commission.

Again; General G, within the last few years, pretends that he has a right to command me, upon the grounds, that our brevets are, in respect to *rank and precedence*, mere nullities; and that he is the *senior* brigadier. I will state this case: Brigadier General Bloomfield, of the U. S. army, was on service, at Philadelphia, in the fall of 1814. General G, in fact, superseded him; although, as brigadiers, General B, was

the *senior* by more than eighteen months. Now under the 62d and 98th articles, Major-General Worrall was clearly the superior officer of General B, and would have commanded him if the two had been on service together ; and under the same articles, General G. actually commanded General W. *A fortiori*, brevet Major-General G. was the superior officer of brigadier General B, and had the right to *supersede and to command him*. Many similar cases between regular and militia officers, of "the like grade," will be given in the sequel. At present, I have demonstrated, independent of General G's former admissions, that a brevet-commission, is, a "commission," within the meaning of the 62d article of War.

(*Note.* The 98th article, act, 1806, was borrowed, Sept. 20, 1776. *Cros's Mil. Laws*, pp. 35, 142. The corresponding British article, is, the 6th, Section XV. I have now shown that *all* the principles governing rank or command, in the British army, (except only such as relate to the King's guards, privileged corps) together with the attendant *usages*, were adopted by Congress in 1775, and 1776, and re-enacted in 1806, with a modification in respect to *engineer* officers, in the 63d article, and perhaps, another, in the 62d, in respect to *staff* officers : And that these modifications do not affect *brevet-rank*. Brevet-rank, therefore, *in respect to commands*, stands in our service, precisely on the same footing as in the British army.) I shall add one remark more on our 62d article, act, 1806.

6th. The concluding words in the article of 1776, are—"regard being always had to the several ranks of those corps, and the posts they usually occupy";—of which, the simple explanation is, that if the infantry officer, for example, be the older, it shall not change the relative position of his regiment, in respect to the cavalry, for example ; but that the infantry shall still remain on the left of the cavalry. The same object is provided for, under the head "rank of corps," Nos. 1 and 2, of the present general regulations. The concluding words of the 62d article, act, 1806, (after stating that the highest in rank shall command) are : "*unless otherwise specially directed*

by the President of the U. S. according to the nature of the case." This clause, like that just noticed, has no particular bearing on brevet-rank. It is, nevertheless, worthy of a passing remark.

The military Academy, for example, is excepted by the special directions of the President, from the general command of the Department in which it is situate, and placed under the immediate government of Lieutenant-Colonel Thayer, as superintendant, under the direct orders of the War Department. Now, if I, as the commander of this geographical Department and Lieutenant-Colonel Thayer's senior officer, were to interfere with the government of that institution, *he*, upon strict military principles, might feel himself bound to submit; but *I* should be justly liable to arrest and punishment, for violating the President's *special directions*. Such is the simple explanation of the final clause of the 62d article. The illustrations might be multiplied; but one will suffice.

Among the strange fancies, so emphatically, as we have seen, denounced by General Washington, but which are still entertained by some who have only the "outside capacities" of soldiers, may be reckoned the opinion, that the President can, under the clause just quoted and explained, make a junior officer command a senior! This notion, like that which attributes to the royal touch the cure of the king's evil, deserves a place among the *Pseudodoxia Epidemica*, collected and signalized by Sir Thomas Browne. Doubtless, the President may, independent of the 62d article, prohibit a senior from commanding a particular junior; he may arrest or withdraw a senior, to make room for a junior; or, finally, he may, with the consent of the Senate, confer a higher commission on the junior, and thus reverse the order of seniority: but nothing more. Let it not be supposed there is aught of arrogance in this conclusion. One, who was equally distinguished in morals and piety,—Dr. Johnson, has said—"It is no limitation of Omnipotence to suppose that one thing is not consistent with another; that the same proposition cannot be at once true and false; that the same number cannot be even

and odd." And so may I add, it is no limitation of the authority of a constitutional Commander-in-chief, to affirm—that of two officers (G. and S.) he cannot make the junior, at the same moment, the senior; he cannot cause the former to command the latter. It would be a military solecism, equally unknown to the American, and to all European armies.

So much for *positive legislation*. I will turn now, for a moment, to the "*Brief Examination*," &c. This has already been noticed, incidentally, above, pp. 5. 7. 65. I shall here consider it the production of General Gaines himself: "*nam, qui non prohibet, cum prohibere possit, jubet.*" He has, moreover, republished the *clear* "exposition" with extravagant encomiums which make it conclusively his own. I, however, should still consider it, like most of his writings, as utterly unworthy of even a passing notice, were it not that he has been "favoured" with the "views" of the Department, and may, therefore, have designedly concealed the strength resulting from that knowledge, under gross invective, and random assertion. Refutation, then, may be too late for the Department.—I respectfully appeal to the President.

The *Brief Examination* begins by mistaking the *declaratory* resolution, April 30, 1778, as the original of our article on brevet-rank, being ignorant that the *principle* was adopted by the old Congress, June 30, 1775, and the article, *in extenso*, Sep. 20, 1776. See above, p. 57. He asserts that the present 62d article was, in 1806, "new!" He asserts that in the revolution, brevets were "restricted to regimental officers"—wishing it to be believed, I suppose, that no rank higher than that of colonel was so conferred. See the Journals of the old Congress, Nov. 6, 1777; Nov. 3. 1783; Sep. 30, 1783. The last was a *general* "*Brevet*," (see above, p. 55) conferring on "all officers of the army, under the rank of Major-general, who hold the same rank now [1783] that they held in the year 1777, a brevet-commission one grade higher than their present rank, having respect to their seniority." Under this resolution many colonels were made brigadiers, and many brigadiers Major-generals. The last case found under the

old Congress, is, that of brevet brigadier General Harmar, (July 31, 1787.) The *Examination*, again, to degrade brevets, says—that *detachment service* (because connected with brevets in *regiments* by the 61st article) is *subordinate*. Any intelligent cadet may detect the falsity of this assertion. Even in quoting two lines from the act, April 16, 1818 (which has no more bearing on the question of rank and command, than the celebrated 4th section, act, 1812) the *Examination* foists in words, without any sort of notice, not found in the act. It throws together “brigades, regiments, troops and companies,” in order to give to readers, other than professional men, the impression, that *brigades* are, also, included in the 61st article. But the most shameless assertion is this:—

“The last authority *we* shall quote, is, one from *the code of existing rules and regulations*”—which is followed by *two* quotations, (*pamphlet*, p. 23) neither of which is to be found in the existing code of rules and regulations! This may require a moment’s attention.

By section 9, act, April 24, 1816, (*Cross’ Mil. Laws*, p. 216) it is provided:—“that the regulations in force before the reduction of the army, be recognised, as far as the same shall be found applicable to the service, subject, however, to such alterations as the Secretary of War may adopt, with the approbation of the President.”

Now, in point of fact, “alterations” were made in the rules and regulations, under this authority, in each of the editions of 1816, 1817, 1820. In 1821, to render the code “*applicable to the service*,” a new and much enlarged edition (prepared by me) was published under a special sanction of Congress. This sanction was repealed in 1822, with the hearty concurrence of the President and Secretary of War, who preferred (under the act, 1816) retaining the power of altering the code, from time to time, as experience and the wants of the service might suggest, and immediately thereafter (in 1822) gave a formal executive sanction to the said edition of 1821. In this sanction there was a saving, or exception, in respect to such parts of the regulations, as might be supposed to conflict with law. That exception was inserted at my in-

stance. The articles of War had subjected suttlers to military law only when in "camp" or "in the field." (See the 60th article.) I had endeavoured, in the regulation on *suttlings*, to supply the obvious omission in respect to *quarters*. Consequently, when the legislative sanction was repealed, the provisions inserted by me, to that effect, fell with it. Hence the saving in the executive sanction. I will stake my commission on the assertion, that there was no other point on which the regulations, compiled by me, conflicted with the articles of War, or any other statute—except in respect to brevet-rank, and there only (in relation to military boards) *to the prejudice of that rank!*

General Gaines boasts of the repeal of the law sanctioning that edition (of 1821) of the regulations! I was aware at the time, that he, or his partisans, had written insidious letters to members of Congress to effect that object. Hence the *suspicion* of his fairness and honour, and the application to Mr. Secretary Calhoun, mentioned above, p. 11. I was, at the time, in Washington, and being consulted by several friends in Congress, on the question of the repeal, then pending, I advised the measure in conformity with the wishes of the President and the Secretary, which, also, happened to be my own.

But to return to the orders, or regulations quoted in the *Brief Examination*, and, one of them, in General G.'s letter, Jan. [30] 1825. *Pamphlet*, pp. 23, 12.

(1.) "Brevet-rank gives no precedence nor command, except on detachments; nor shall persons having such rank only, be included in the roster of officers for any duty other than that performed by detachments, and to which they shall be specially assigned."

To this, General G. in his letter, gives the date, June 28, 1814, and adds—"Such *was* the law, and such the regulations at the precise period of time at which my brevet, as well as that of General Scott, was conferred." Nevertheless, the two brevets did not *precede* the regulation! At the date given by him there were but few officers of the line who held brevets; whereas all *staff-officers* held their staff-rank solely

by brevet. Hence the expression “having such rank only,” which was the case with many staff-officers, at the time, who had been introduced into the service without talent or experience, and several without character. Such staff-brevets became odious to the army. The officers of the line clamoured against them, and hence the rule in question. They were forbidden to *assume* commands. They were to await *special assignments*. This soothed the pride of officers attached to *marching* and *fighting* regiments—justly irritated by the improper appointments. Such is the history of a regulation which, having died a natural death, General G. attempts to resuscitate! If it meant more than I have stated, then it contradicted the 61st article of War;—it was a direct attempt to repeal that article, and we have heard enough from General G. himself, of regulations being “not conformable to law” (even under a sanction of Congress;—) of “lawless regulations”—of regulations “contrary to an *express* statute of the U. S.”

(2.) “When officers of different regiments of infantry, or other corps, meet as members of the same court-martial, brevet-rank will be exercised, and the same rule will apply to officers on detachment (conformably to the 61st article of War) which extends to temporary service only, and not to the regular command of departments, permanent posts, and garrisons—but brevet-command may be exercised therein by the assignment of the commanding general upon special and temporary service.” (*Note.* I have no copy before me of the two orders or regulations numbered (1) and (2) other than what is given in General G.’s pamphlet. I may well, therefore, refuse to vouch for their accuracy. Indeed, that which I have numbered (1) is differently quoted in the two places of the pamphlet.)

Now would it be believed, from the reading of those two orders, that there was a *pre-existing statute on the same subject*, if the latter order did not contain the parenthesis? Are the words “regular,” “permanent,” “assigned,” “assignment,” “commanding general,” “special and temporary service,” to

* Cols. Drayton & Powell (appointed *after* the order) were honourable exceptions from this censure. The former had been moreover, Colonel of Regiment, and had much professional talent and experience.

be found in the 61st article or any other law ? In fact, the two "regulations" were palpable contradictions of law and of all principle and usage dependent thereon. Hence they were, at least since 1820, left out of "the code of existing rules and regulations," as not "applicable to the service"; and hence, "to avoid all cavil, it was thought best to throw back the whole subject of rank, by brevet, on *positive legislation.*" See above, p. 13.

But even during the existence of the orders or regulations (1) and (2), between June 1814 and 1821, they were, because contrary to law, universally regarded, in practice, as mere dead letters, except in respect to one class of staff-officers already mentioned. This will be specially illustrated below, under the head, "Precedents," &c. ; but I will here remark that during the very period in question, the following brevet-officers, with their brevet-pay and emoluments, each commanded a *permanent* district or department ; viz.—*Generals* Scott, Ripley, Gaines, Macomb, Burbeck, Porter, Swift, Miller ; *Colonels* Fenwick, Mitchell, Jesup, Hindman, &c.

The *Brief Examination* says, that "certain services" "are forbidden to be exercised by *brevet-officers,*" and cites "all regular and permanent commands of departments," &c. Has not Brevet-Major-General Gaines for, at least the last six years commanded, and may he not for the remainder of his life continue to command, a *regular and permanent department,* with the pay and emoluments of his brevet-rank ? How is this ? Does he command as a brigadier, and yet receive the pay, &c. of major-general ? This would not only be absurd, but against the positive letter of the act, April 16, 1818, which declares that "brevet-commissions shall be entitled to, and receive the pay and emoluments of their brevet-rank, when on duty and having a command, according to their brevet-rank, and at no other time." Again I demonstrate him to be *de facto*, as well as *de jure*, a major-general, in despite of his arguments to the contrary ; and the same demonstrations applying equally to my own brevet, I am "*appointed over,*" and "*set over him,*" in the army of the United States.

I will now ask whence the claim of General Gaines, at this period, to be considered my senior officer? Is it, because he was the older brigadier-general? We both took rank as brigadiers from March 9, 1814. Was he the older colonel? We both took rank as colonels from March 12, 1813. But he was the senior lieutenant-colonel by a day at least? Not at all: we again both took rank as lieutenant-colonels from July 6, 1812. Perhaps it will be thought, that I have, at some time or other, been under the orders of this officer? Again I answer never for an instant in my life; but that I have, as his senior and commanding officer, presided at a court-martial for his trial. Whence then his present most extraordinary claim to rank and precedence over his senior major-general—his senior in the highest grade known to the army, by twenty-one days*? Why, simply and singly this: when I entered the army a captain of light artillery, May 3, 1808, General G. had already been a captain of infantry some months—or, if he prefer, a quarter of a century! And that remote seniority in a lower rank, he now pretends ought to annihilate the difference in my favour between our present commissions as major-generals!—In being called upon to combat so strange a proposition, I feel that I have indeed fallen upon evil times. At the close of the war, there was not an intelligent officer who would not have spared me the trouble, by his spontaneous decision in my favour. I have, however, too long rested on the precedents of that period, and

* Before my brevet was made out (or engrossed on parchment) for the battle of Chippewa, July 5, 1814, the Executive had heard of the battle of Niagara, July 25, 1814; and as two brevets could not be granted (the rank of lieutenant-general not being provided for) the Executive put both battles in the same brevet, and gave the rank from the date of the latter. The first date was afterwards offered to me; but as the correction could not be made in the brevet without striking out *the battle of Niagara*, or committing an anachronism, I declined the offer. Besides; the substitution of the fifth of July, 1814, for the 25th of the same month, would not have made me the senior of any officer who was left, at the latter date, my senior.

the insidious acquiescence of my opponent. Some of those shall presently be recalled. In the meantime, a passing remark on a point pretermitted. It belongs to the class—*pseudodoxia epidemica*.

The terms, "full lieutenant-colonel," (a solecism) "full colonel," &c., are sometimes carelessly used in conversation, even by intelligent military men, in a sense which has a leaden influence on the question I have been discussing. General Gaines' phrase, is, as we have seen, "complete," applied to General Brown's rank. This, also, belongs to the same numerous family. Neither term can justly be employed to contradistinguish ordinary, from brevet-rank. In the British army, and wherever else the English language is spoken, in reference to this subject, "full" can only be applied in this sense:—a captain-lieutenant, (we had officers so denominated in the revolutionary war) is not a *full* captain; a lieutenant-colonel, is not a *full* colonel, and a brigadier, a major-general (General Brown himself,) or a lieutenant-general, is not a *full* general. We have had but one *full* general—the father of his country. The term then cannot be correctly employed to contradistinguish ordinary, from brevet-rank. It may be applied in the examples just given, with equal propriety to either rank. Thus, a brevet lieutenant-colonel, is no more a full *brevet* colonel, than he is a full colonel of a *regiment*, or by *ordinary* rank; and in the British army, we have seen that a full general holds his rank, in common with all other general officers, *by brevet*.—The misuse of terms has shaken the moral world. An humble individual may then well tremble for his rights when he finds them obnoxious to a like confusion of ideas.

Acts, or decisions of the Government; common understanding of the country, or American precedents. (See above, pp. 23, 44.)

1. The importance attached to brevets by the old Congress has been exhibited above, p. 59.

2. The opinion and decision of General Washington, (in the case of Brevet-major M'Pherson) is given above, pp. 43, 44

3. Brevet brigadier-general Harmar was only a lieutenant-colonel of a legion, stationed on the Ohio. Two grades were conferred on him, by brevet, in 1787, to enable him to command militia brigadiers. See above, p. 60.

4. After H's defeat in 1791, Sinclair was appointed Major-general, and Butler brigadier-general, by ordinary commissions, and united with Harmar's army. In rank they then stood—Sinclair, Harmar, Butler. However, to prevent the command from devolving on Harmar in the event of the death or sickness of Sinclair, General Washington sent the brevet of Major-general, to Butler, to place him above brevet-brigadier H. although B. was, before, *brigadier by ordinary commission!* (Note. The books and files of the War office, of that period, have been burned. Major-General Harrison, who served with that army, however, (and other officers) will avouch the truth of this statement.)

5. See letter-book, War Department, May 22, 1814, for a proposition to make General Jackson, then of the Tennessee militia, a brigadier by ordinary commission, and a Major-general by brevet—no doubt to enable him to command, at New Orleans, senior brigadiers of the army, and Major-generals of the militia to be sent thither. The resignation of Major-General Harrison or Hampton, occurring immediately after, the executive gave the vacant commission to General Jackson. These facts will be found in a subsequent letter, same book.

6. It will be recollected that General Gaines and myself were at Albany together, in Sep. 1814. The following letters from Mr. Secretary Monroe, will, for the most part, explain themselves. A few remarks will be added to each.

“ War Department, Sep. 19th, 1814.

“ SIR :

THE city of Philadelphia is menaced by the enemy. The Executive of Pennsylvania, with the corporation of the city, are collecting a large force for its defence : they want a Major-general of the regular army to take the command.

Their representatives in Congress are now with me, and are anxious that you should take that command. It will be a temporary service. If the state of your health will permit, you will repair to Philadelphia and assume the command of the 4th military district. In case you should find yourself unable to enter immediately on duty, you will please to deliver this order to Major-General Gaines, who, it is understood, is now with you in Albany, and will, in that event, assume the command accordingly, as soon as he shall arrive in Philadelphia."

1st. The Executive of Pennsylvania wanted a Major-General to command the militia Major-Generals, and brigadier General Bloomfield of the army, then at the head of the district or department, head quarters, Philadelphia. I was considered a *Major-general* by the Executive of the U. S. and the delegation in Congress from Pennsylvania.

2d. The command, Mr. Secretary Monroe writes, "will be a temporary service." I had, from the beginning of the war, protested against being employed in the interior; against being stationed in a district which the enemy might not choose to visit. To those objections the letter alludes.

3d. If unable to go to Philadelphia, I was instructed "to deliver the order to General Gaines." I must then have been regarded as the *senior* of General Gaines. If a Major-general, at all, I was, of course, his senior by twenty-one days.

" War Department, Oct. 1, 1814.

" SIR :

I have just had the honour to receive your letter of the 29th ult. from Philadelphia. It gives me great pleasure to hear that you have so far recovered of your wounds, as to be able to render active service. Your designation to this place, instead of Philadelphia, to which latter station General Gaines is appointed, was made at the suggestion of some of your friends who wished to see you. The commands are equal in all respects. The number of troops as nearly the same as is

the probability of meeting the enemy in the field. I hope to have the pleasure of seeing you here as early as your health will permit."

1st. *Change from the Philadelphia district to that of Washington.* I had protested against the change, upon the grounds that I was senior to General Gaines, and therefore had the choice of districts, &c.

2d. *The change was made at the suggestion of some of my friends, &c.* At that time, I had not the honour of a personal acquaintance with Mr. Secretary Monroe. I was wanted at Washington, to assist in filling up the outline of the plans of operation for the expected campaign of 1815, and was accordingly consulted on those matters.

(*Note.* There was, in March 1825, no record of the correspondence in question in the War Department. The books in which Mr. Secretary Monroe's letters had been recorded, were then, as I ascertained, in his possession. The letters are, nevertheless, strictly official.)

7. See a letter written, in duplicate, to General Gaines and myself, letter-book, War Department, Oct, 17, 1814. My name is placed first.

8. See Army Register, published *by authority*, and corrected "up to Jan. 1, 1815." The names of brevet Major-generals Scott, Gaines, Macomb; brevet brigadier Generals Burbeck,* Porter, Swift, and Miller, were printed in this relative order, and with the names of the generals by ordinary

* By the 64th and 66th articles of war, courts-martial shall consist of a certain number of "*commissioned officers*" each. Did not Burbeck sit on Wilkinson's court, and other courts-martial? Are not topographical engineers, and supernumerary second lieutenants, now in service, and who hold rank solely by brevet, frequently placed on courts-martial? They are, then, commissioned officers, and so am I a "*commissioned*" major-general, under the 62d article. Again; are not brevet officers, who hold no other commissions, in common with all officers, subject to the rules and articles of war? See, particularly, the 33d, 39th, 45th, 59th, &c.; also, p. 67, above, and illustration, 12.

commissions—the whole in the exact order of their respective dates of rank, whether by brevet or otherwise.

(*Note.* The change from this manner of printing the register, according to army rank, whether by brevet or otherwise, took place during my absence from the U. S. On my return, and till within a few years, I regarded the change, though irregular, of but little importance, as General Gaines had admitted me to be his senior, and *as the remark, opposite to my name, always showed me to be such.* In his letter, Jan. [30], 1825, he says—"the proper army registers for the last 16 years, exhibit the name of General Scott *uniformly* as my junior!")

9. See the letters of Mr. Dallas, acting Secretary of War, dated, respectively, the 8th and 17th April, 1815, addressed to Generals Brown, Jackson, Scott, Gaines, Macomb, and Ripley—named in this order, in exact conformity with their rank, whether by brevet or otherwise.

(*Note.* Ripley did not receive the brevet of Major-general till May, 1815. It was, however, then ante-dated, to July 25, 1814; which, though it still left him my junior, placed him over Generals Gaines and Macomb. As brigadiers we had stood thus: Macomb, Gaines, Scott, Ripley. After Ripley's brevet, we shall see that he took rank according to the date given therein.)

10. In the general order, dated, May 17, 1815, organizing a northern and southern division, Ripley's name was placed before Macomb's in the former, and Scott's before that of Gaines in the latter division. If General Brown had been absent from the northern division, Ripley would have commanded Macomb; or if General Jackson had been absent from the southern division, the command would have devolved on Scott.

(*Note.* This order is cited as one of the direct acts of the Executive. The original draft, in the hand-writing of Mr. Dallas, was in the War Office not long since. Its principles, like those of the two letters from the same pen, mentioned above, were, as I understood, at the time, discussed with the President, I think, in a full cabinet.)

11. See Mr. Secretary Dallas's letter to J. Hopkinson, Esq. relative to medals. The names of Generals Brown, Jackson, Scott, Ripley, Gaines and Macomb, are again mentioned in this order. (May 25, 1815.)

12. By the act, March 30, 1814, the 1st. 2d. and 3d. regiments of artillery, were consolidated, or formed into *a corps of artillery*, and the rank of colonel, therein abolished. Colonel Burbeck of the first, had previously received the brevet of brigadier general. By this brevet, alone, he was put into the command of a district, without any relation to the corps of artillery, and so continued in command by the Executive, as a brigadier general, till the general reduction in June 1815, and then disbanded with other supernumerary officers.

13. The court martial in 1816, ordered by the Executive, has already been mentioned, above, pp. 26, &c. I again assert, that the uniform practice in the army and the navy has been, when practicable, to select, at least the President of the court, from the seniors of the party to be tried. If I had not then been regarded as the senior officer of General Gaines, why was not General Brown or General Jackson named for that duty? General Gaines has answered this question by an imputation on Mr. Secretary Crawford, as well as myself, and which I have shown to be utterly unfounded.

14. Sep. 14, 1822, during the sickness of General Brown, the general-in-chief of the army, and his absence from Washington, it was thought necessary that the next in rank should be called to that place to command, in his stead, and until his recovery. I was accordingly notified for that service, and informed that the *President had so decided*. Delicacy required that General Brown, then under medical advice in Philadelphia, should be advised of the intentions of the President. Finding his health improved, he, on receiving the notice, repaired to Washington, and hence, the decision in my favour was not *published in orders*. See the letter of Mr. Secretary Calhoun, of the above date, and also the certificates of Colonel Jones and Major Nourse, all on file in the War Department. I have no copy of either paper.

(*Note.* General Gaines' pamphlet, p. 17, has given a letter, or an extract of one, from Mr. Calhoun to him, which, by no means contradicts my recollection of the letter to me. The obvious meaning of the second letter is, that the President did not *then* think it necessary to *publish* a decision on the question. In the former case there was an apparent necessity for making up a decision, and for advising me thereof. When General Brown returned to duty, the President considered the necessity of publishing his decision as having passed away. With great deference, I entertained the opposite opinion.)

15. When the medals which had been voted by Congress to certain officers of the late war, were presented by the President in behalf of the United States, *mine was presented before that of General Gaines.*

16. In the complimentary resolutions passed by the legislatures of several states—New-York, Virginia, South Carolina, and Georgia, in relation to the events of the war, my name, in like manner, will be found, in every instance, above that of General Gaines.

17. The case of the presentation of the swords to the same two officers by the Governor of New-York, has already been stated above, pp. 28, 29.

18. The same thing, under the same circumstances, would again have occurred at Richmond in the spring of 1825, but that General Gaines, who arrived the night before the ceremony was to take place, finding that I was present, hurried abruptly through that city, saying that he would receive *his* sword at another time.—Perhaps a like reason induced him to receive his medal *by proxy* a short time before.

19. When the board of officers summoned in the letters mentioned in illustration, 9, above, met at Washington to assist at the reduction of the army, there were for the first three or four days, present, only Generals Scott, Macomb, and Ripley. Generals Jackson and Gaines were too distant to obey the summons in time; but General Brown arrived on the third or fourth day of the session of the board. In the mean-

time the board was regularly summoned, organized, and adjourned by me, as its president.

(*Note.* The certificates of the two recorders, Major Belton and Mr. Lambert, to those facts, are on file in the War office.—General Macomb had been my *senior* brigadier-general; but the restriction contained in the regulations of 1821 did not then exist. See above, pp. 24, 25.—General Ripley received his brevet a few weeks after.)

20. Brevet Brigadier-generals Porter and Miller were employed in the command of “regular and permanent” military districts or departments, as brigadiers, *without connection with their regiments*—the first, from 1813 down to 1821, and Miller occasionally within the same period. See Burbeck’s case above, and note to 8.

21. R. Swartwout, quarter-master-general, U. S. A., who held no commission except that of brigadier-general *by brevet*, commanded one of the brigades in the army, in the descent of the St. Lawrence, in 1813.

22. We have seen above, p. 70, that General Gaines commanded Major-general Worrall of the militia. About the same time I too commanded the latter, together with Major-generals Pegram and Watson, all of the militia, and in the service of the U. S. Brevet Major-general Macomb, I believe, also commanded major-generals of the militia on the Plattsburgh frontier. Again; Major-general Harper, on being appointed a major-general of the Maryland militia, in Nov. or Dec. 1814, immediately called on me and tendered his services at Baltimore. The 62d and 98th articles of War being adverted to by himself, he added,—that there could not be a doubt of my right to command him. In like manner, Brevet Brigadier-general Porter commanded in the Norfolk district, in 1814, Brigadier-general R. B. Taylor, of the Virginia militia; and finally, I had the honour, in the autumn, 1826, to preside at a board of militia generals and army officers, with Major-general Cadwalader of Pennsylvania, as one of the former. All these militia generals were, at least, worthy of the rank which they respectively held;—Generals

Harper and Taylor were, moreover, distinguished lawyers, and General Cadwalader is known not to be inferior in professional knowledge, to any general in the army.

23. For the *admissions* of General Gaines himself—the least important of the precedents that I shall cite, see above, pp. 20, 21, 22, 52.

From the stream of *American* precedents and illustrations given, and which might be much extended, it is perfectly obvious, that the practice of our army is in exact accordance with the principles and usages of the British army—whence they were, in fact, in their *entirety*, borrowed and adopted, by Congress, cotemporaneously with our independence.—Again I challenge the production of a single case of an opposite tendency.

General Conclusions.

1. In the U. States' army there is no restriction on *brevet-rank* or *command*, other than what is found in the 61st article of War.

2. That article only applies to officers when serving *within* their particular regiments, independent troops, or companies, or other “permanently organized corps.”

3. A brigadier or a major-general, as such, is not “mustered in the said corps,” nor in any corps.

4. A brevet-officer not belonging to any such corps, and particularly, if by rank above them all, cannot in any case fall within those restrictions: in other words, his rank is, in all cases, absolute, or “effectual for every military purpose in the army at large.”

5. (*Corollary.*) A brigadier-general, by ordinary commission, on receiving the brevet of major-general, has the former rank merged in the latter—except so far as the higher, may be separated *in thought*, from the lower rank, merely in respect to the question of *pay and emoluments*, and that of his *retention* in the army. Hence the term *accident*, formerly applied by me, to the higher rank.

The progress of this letter has been delayed, from day to

day, for several weeks, in the expectation of receiving, through unofficial channels, certain documents, some of which have not yet arrived.

On reflection, I think it probable that I shall decline offering myself as the *prosecutor* of General Gaines. The evidences of his guilt I have detailed in self-defence; but I am not a judge-advocate.

Trusting that my seniority over General Gaines, which has been demonstrated, in every form, will soon be recognised and published by the President,

I have the honour to remain, with respect,

Sir, your most obedient servant,

(Signed)

WINFIELD SCOTT.

P. S. In reading over the foregoing letter, it has occurred to me, that, possibly, some parts of it may be thought too bold for one in my subordinate position! I can only say, that no disrespect has been expressed, much less—felt, by me, either for the President or any other branch of the government, enumerated in the 5th article of War, on this very subject of “disrespectful words.” In that article, however, I do not find the office of *Secretary of War* mentioned, or anywise included. To you, Sir, I have expressed myself—not *disrespectfully*, but in the language of complaint—I will add, of *just complaint* in respect to the letters reviewed above, of Jan. 11th and Oct. 25th, 1826—all knowledge of which was withheld from me till *accident* betrayed their existence;—and I am yet to learn, that that humble privilege may not be exercised *for cause*. Should I, however, contrary to all belief and expectation, ever find myself to have been in error, on the sufficiency of the “cause,” I shall promptly retract those complaints. If not—
not. (Signed) W. S.

ERRATA.

Page 17, line 7, strike out the last word *to*.

Page 36, line 15, strike out the word *well*.

Page 44, add to the extract of General Washington's letter, this note:—

* How do we know, for example, that a Major-general commands a Brigadier-general; a Lieutenant, an Ensign, or a *senior* officer, a *junior* of the same grade? Not by *express* law, for there is not a syllable on the statute-book, to settle either point. The *rights of command* in the several cases, then, can only be deduced from the *lex non scripta*, the *practice of armies*; “the rules and *discipline* of war;”—“the *custom* of war, in like case,” recognised, as above. And so the right of a brevet Major-general to command a *junior* Major-general, and *a fortiori*, a *senior* Brigadier-general.